# THE CASE OF IRELAND'S Being Bound by Acts of Parliament IN ENGLAND, Stated.

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BY *William Molyneux*, of *Dublin*, Esq;

*Dublin*, Printed by and for *J. R.* And are to be Sold by *Rob. Clavel*, and *A.* and *J. Churchil*, Booksellers in *London*. 1698.

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# TO THE KING.

*SIR,*

THE Expedition Your MAJESTY Undertook into *England*, to Rescue these Nations from Arbitrary Power, and those Unjust Invasions that were made

on our Religion, Laws, Rights and Liberties, was an Action in it self so *Great*, and of such Immense Benefit to our Distressed Countries, that 'tis Impossible to give it a Representation so *Glorious* as it Deserves. Of all Your Majesty's Kingdoms, none was more Sensible of the Happy Effects thereof, than Your *Kingdom of Ireland*, which from the Depth of Misery and Despair, is Raised by your Majesty to a Prosperous and Flourishing Condition. And we presume most humbly to Implore the Continuance of Your Majesty's Graces to us, by Protecting

cting and Defending those *Rights* and *Liberties* which we have Enjoy'd under the Crown of *England* for above Five Hundred Years, and which some of late do Endeavour to Violate. Your most Excellent Majesty is the *Common Indulgent Father* of all your Countries, and have an *Equal* Regard to the *Birth-Rights* of all Your *Children*; and will not permit the *Eldest*, because the *Strongest*, to Encroach on the Possessions of the *Younger*: Especially considering with what Duty, Loyalty, and Filial Obedience, we have ever behav'd our selves to Your Majesty:

Insomuch that I take leave to Assert, That Your Majesty has not in all Your Dominions a People more *United* and *Steady* to Your Interests, than the *Protestants of Ireland*: Which has manifestly Appear'd in all our Actions and Parliamentary Proceedings, since Your Majesty's Happy Accession to the Throne. To Relieve the Distress'd, has ever been the Peculiar *Character* of Your Majesty's *Glorious Family*. The *United Provinces* have found this in Your *Famous Ancestors*: And all *Europe* has been Sensible of this in Your *Royal Person*. To this End more particularly

larly, You came into these Kingdoms, as Your Majesty has been pleas'd to Declare; And as You have Establish'd the *Rights and Liberties of England* on a Foundation that, we hope, can *never be shaken*; So we doubt not but Your Sacred Majesty will have a Tender Care of Your Poor *Subjects of Ireland*, who are *Equally* Your Subjects, as the rest of Your People.

Pardon, I most Humbly beseech Your Majesty, my Presumption, in Appealing to You on this Occasion; Nothing but the *Dignity* and *Weight* of the Subject, can

Excuse my Boldness herein: But if That be Considered, it Deserves the Regard of the *Greatest Prince*; 'Tis no less than the *Rights* and *Liberties* of one of His Kingdoms, on which their Religion, their Property, their *All* Depends; and which they have Enjoyed for Five Hundred Years past. This, I think, I have clearly shewn in the following Leaves: I am sure, if my *Management* thereof, were suitable to the *Justice* of our Cause, our *Friends* of *England* can no longer Doubt it.

At Your Majesty's Feet therefore, I throw it; and with it the Unworthy Author thereof,

(*May it please Your Majesty*)

*Your Majesty's*

*Most Dutiful, Loyal,*

*and Obedient*

*Subject and Servant,*

William Molyneux.

At Your Majesty's Feet
therefore, I throw it; and
with it the Unworthy Au-
thor thereof.

(May it please Your Majesty)

Your Majesty's

Most Dutiful, Loyal,

and Obedient

Subject and Servant,

William Molyneux.

# PREFACE

# READER.

I *Have nothing to Offer in this Preface, more than to let the Reader know, how Unconcern'd I am in any of those Particular Inducements, which might seem*

at

*at this Juncture to have Occasi-on'd the following Discourse.*

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*I have not any Concern in* Wooll, *or the* Wooll-Trade. *I am no wise Interested in the* Forfeitures, *or* Grants. *I am not at all Solicitous, whether the* Bishop, *or* Society *of* Derry *Recover the Land they Contest about.*

*So that, I think, I am as* Free *from any* Personal Prejudice *in this Cause, as 'tis possible to Expect any Man should be, that has an* Estate *and* Property *in this Kingdom, and who is a* Member of Parliament *therein. I hope therefore 'tis a* Publick

lick Principle *that has mov'd me to this Undertaking : I am sure, I am not Conscious to my Self of any other Intention.*

*I have heard it has been said, That perhaps I might run some* Hazard *in Attempting this Argument; But I am not at all Apprehensive of any such Danger : We are in a Miserable Condition indeed, if we may not be Allow'd to* Complain, *when we think we are Hurt; and to give our Reasons with all* Modesty *and* Submission. *But were it otherwise, it would not in the least Affect, or Discourage me in an Attempt, where I think my Cause Good, and my Country*

Con-

*Concern'd, and where I am fully perſwaded, the* True Intereſt *of* England *is as Deeply Engaged, as the* Proteſtant Intereſt *of* Ireland.

*The Great and* Juſt Council *of* England *freely Allows all Addreſſes of this ſort To* Receive *and Hear* Grievances, *is a great part of their Buſineſs; and to* Redreſs *them, is their Chief* Glory. *But this is not to be done, till they are laid before them, and fairly Stated for their Conſideration.*

*This I have endeavour'd in the following Paper. What Succeſs it may have, I am not very*

*follici-*

*solicitous about. I have Done what I thought was my Duty, and Commit the Event to* GOD Almighty, *and the* Wise Council of England.

*Dublin, Febr.* 8. $\frac{7}{98}$.

W. MOLYNEUX.

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The

*solicitous about. I have Done what I thought was my Duty, and Commit the Event to* GOD *Almighty, and the Wise Council of England.*

*Dublin, Febr. 8.*

1698.

W. MOLYNEUX.

The

# The CASE of IRELAND's Being Bound by Act of Parliament in ENGLAND, STATED.

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Introduction, and Occasion of this Disquisition.

I HAVE ever been so fully perswaded of the strict Justice of the Parliament of *England*, that I could never think that any of Their Proceedings, which might seem to have the least Tendency to Hardship on their Neighbours, could arise from any thing but want of Due Information, and a right State of the

Business under their Consideration. The want of which, in Matters wherein another People are chiefly Concern'd, is no Defect in the Parliament of *England*, but is highly Blameable in the Persons whose Affair is Transacting, and who permit that Illustrious Body of Senators to be Mis-inform'd, without giving them that Light that might Rectifie them.

I could never Imagine that those Great *Asserters* of their *Own Liberties* and *Rights*, could ever think of making the least Breach in the *Rights* and *Liberties* of *their Neighbours*, unless they thought that they had *Right* so to do; and this they might well surmise, if their Neighbours quietly see their Inclosures Invaded, without *Expostulating* the Matter at least, and shewing Reasons, why they may think that Hardships are put upon them therein.

The Consideration hereof has Excited me to undertake this Disquisition, which I do with all imaginable Diffidence of my own Performance, and with the most profound

found Respect and Deference to that August Senate. The present Juncture of Affairs, when the Business of *Ireland* is under the Consideration of both Houses of the English Parliament, seems to require this from some Person; and seeing all Others silent, I venture to Expose my own Weakness, rather than be wanting at this time *to my Country*. I might say indeed *to Mankind*; for 'tis the Cause of the whole Race of *Adam*, that I Argue; *Liberty* seems the Inherent Right of all *Mankind*; and on whatsoever Ground any one Nation can Challenge it to themselves, on the same Reason may the Rest of *Adam*'s Children Expect it.

* Bishop of *Derry* in the House of Lords, and Prohibiting Exportation of our Woollen Manufacture in the House of Commons.

If what I Offer herein seems to carry any Weight in relation to my own Poor Country, I shall be abundantly happy in the Attempt: But if after all, the Great Council of *England* Resolve the contrary, I shall then believe my self to be in an Error, and with the lowest Submission ask Pardon for my Assurance. However, I humbly presume I shall not be hardly Censur'd

by them, for offering to lay before them a fair State of our Case, by such Information as I can procure; especially when at the same time I declare my Intention of a Submissive Acquiescence in whatever they Resolve for or against what I Offer.

Subject of this Enquiry.

The Subject therefore of our present Disquisition shall be, *How far the Parliament of* England *may think it Reasonable to intermeddle with the Affairs of* Ireland, *and Bind us up by Laws made in their House.*

And, seeing the *Right* which *England* may pretend to, for Binding us by their Acts of Parliament, can be founded only on the *Imaginary Title of Conquest* or *Purchase*, or on *Precedents* and *Matters of Record*: We shall Enquire into the following Particulars.

(1.) *First*, How *Ireland* became a Kingdom *Annexed* to the Crown of *England*. And here we shall at large give a faithful Narrative of the *Fifth Expedition of the Britains* into this Country, and King *Henry*

*Henry* the Second's Arrival here, ſuch as our beſt Hiſtorians give us.

(2.) *Secondly*, We ſhall Enquire, Whether this Expedition, and the Engliſh Settlement that afterwards follow'd thereon, can properly be call'd a *Conqueſt*? Or whether any Victories obtain'd by the Engliſh, in any ſucceeding Ages in this Kingdom, upon any *Rebellion*, may be call'd a *Conqueſt* thereof?

(3.) *Thirdly*, Granting that it were a *Conqueſt*, we ſhall Enquire what *Title* a Conqueſt gives.

(4.) *Fourthly*, We ſhall Enquire what *Conceſſions* have been from time to time made to *Ireland*, to take off what even the moſt Rigorous Aſſertors of a Conquerour's Title do pretend to. And herein we ſhall ſhew by what Degrees the Engliſh Form of Government, and the Engliſh Statute-Laws, came to be received among us; And this ſhall appear, to be wholly by the *Conſent* of the People and Parliament of *Ireland*.

(5.) *Fifthly*, We shall Enquire into the Precedents and Opinions of the Learned in the Laws, relating to this Matter, with Observations thereon.

(6.) *Sixthly*, We shall Consider the Reasons and Arguments that may be farther Offered on one side and t'other; and shall Draw some General Conclusions from the Whole.

*Britain's first Expedition into Ireland.*

As to the First, We shall find the History of the First Expedition of the *English* into *Ireland*, to be briefly thus: In the Reign of King *Henry* the Second, *Dermot Fitzmurchard*, commonly called *Mac-Morrogh*, Prince of *Leinster*, who was a Man Cruel and Oppressive, after many Battels with other Princes of *Ireland*, and being Beaten and put to Flight by them, Apply'd for Relief to King *Henry* the Second, who was then busied in *Aquitain*; the King was not then in such Circumstances as to afford him much Help: However thus much he did for him,

By

By Letters Patents he granted License to all his Subjects throughout his Dominions, to Assist the said Prince to Recover his Dominions. These Letters Patents are to be seen in * *Giraldus Cambrensis*, who was Historiographer and Secretary to King *Hen.* II. and Accompanied him in his Expedition into *Ireland*, and from him it is that we have this Relation. The *Irish Prince* brought these Letters into *England*, and caused them to be Read in the Audience of many People; Beating up, as it were, for Voluntiers and free Adventurers into *Ireland*. At length, *Richard* Earl of *Strigul* (now *Chepstow* in *Monmouthshire*) Son of Earl *Gilbert*, call'd *Strongbow*, Agreed with him, to Assist him in the Recovery of his Country, on Condition that *Dermot* should give him his Eldest Daughter in Marriage, and his Kingdom of *Leinster* after his Death. About the same time *Robert Fitz-Stephen*, Governour of *Aberlesie* in *Wales*, Agreed likewise with *Dermot* to help him, on Condition that he would grant to him and *Maurice Fitzgerald* in Fee

* *Giraldus Cambr. Hib. Expug.* Lib. I, C. I,

H. 2. grants Lres Patents of leave to his Subjects to assist him.

Ric. Strongbow assisted him on Cond. to have K. dom of Leinster after his death.

Rob. Fitz-Stephen & others.

the City of *Wexford*, with two Cantreds or Hundreds of Land near adjoyning.

These Adventurers afterwards went over, and were successful in Treating with the *Irish*, and Taking *Wexford*, *Waterford*, *Dublin*, and other Places. Whereupon Earl *Richard Strongbow* married *Dermot*'s Daughter, and according to Compact, succeeded him in his Kingdom.

*Hen. II.* comes into *Ireland*.

A little after the Descent of these Adventurers, King *Henry* II. himself went into *Ireland* with an Army, in *November* 1172. and finding that his Subjects of *England* had made a very good hand of their Expedition, he obtain'd from Earl *Richard Strongbow* a Surrender of *Dublin*, with the Cantreds adjoyning, and all the Maritime Towns and Castles. But *Strongbow* and his Heirs were to Enjoy the Residue of *Dermot*'s Principality.

*Landed at Waterford*

*Irish submit to him.*

King *Hen.* II. Landed at *Waterford* from *Milford* in *Pembrokshire*, and staying there some few days,

(says *Giraldus Cambrensis*) *Rex Corcagiensis Dormitius advenit ei, & tam Subjectionis vinculo quam fidelitatis Sacramento Regi Anglorum se sponte submisit. He freely swore Fealty and Subjection to the King of England.*

From thence he went to *Lismore*, and thence to *Cashel*, where *Dunaldus* King of *Lymerick*, *se quoque fidelem Regi exhibuit.* The like did all the Nobility and Princes in the South of *Ireland*.

Afterwards he marched to *Dublin*, and there the Princes of the Adjacent Countries came to him, *& sub Fidelitatis & Subjectionis obtentu a Rege Pacem impetrabant.* Thus *Cambrensis* in his *Hibernia Expugnata*; and there he mentions the several Princes that came in, vizt. *Macshaghlin* King of *Ophaly*, *O Carrol* King of *Uriel* (now *Lowth*) *O Rourk* King of *Meath*, *Rotherick O Connor* King of *Connaught*, and *Monarch* as it were of the whole Island, with divers others, *qui firmissimis fidelitatis & subjectionis vinculis Domino Regi innodarunt & in singu-*

Dublin submits to H. 2.

*singulari Rotherico Conactiæ Principe tanquam Insulæ Monarchâ subditi reddantur universi, nec alicujus fere in Insula vel nominis vel omnis erat qui Regiæ Majestati & Debitam Domino Reverentiam, non exhiberet.*

The same Relation we have from *Roger Hoveden* (Annal. pars-poster. fol. 301.) About the Kalends of *November* 1172. (saith he) King *Henry* II. of *England*, took Shipping for *Ireland* at *Milford*, and Landed at *Waterford*, *& ibi venerunt ad eum Rex Corcagiensis*, *Rex de Lymerick*, *Rex de Oxenie*, *Rex Midiæ*, *& fere omnes Hiberniæ Potentes.* And a little afterwards in the same place speaking of King *Henry* the Second's being at *Waterford*, *ibidem venerunt ad Regem Angliæ omnes Archiepiscopi*, *Episcopi*, *& Abbates totius Hiberniæ*, *& receperunt eum in Regem & Dominum Hiberniæ juxta eo & heredibus suis Fidelitatem & Regnandi super eos Potestatem in perpetuum & inde Dederunt ei Chartas suas. Exemplo autem Clericorum prædicti Reges & Principes Hiberniæ receperunt similiter eodo Henricum Regem Angliæ in*

*Domi-*

*Dominum & Regem Hiberniæ, & sua devenerunt, & ei & Heredibus suis Fidelitatem contra omnes Juraverunt.*

*Matthew Paris* likewise in his History speaking of King *Hen.* II. being in *Ireland*, saith, *Archiepiscopi & Episcopi ipsum in Regem & Dominum receperunt, & ei Fidelitatem & Homagium Juraverunt.*

*John Brampton* Abbot of *Jornalensis* in his *Historia Jornalensi*, pag. 1070. speaking of *Hen.* II. hath these words, *Recepit ab unoquoque Archiepiscopo & Episcopo Hiberniæ Literas cum Sigillis suis in modum Chartæ pendentibus, Regnum Hiberniæ sibi & Hæredibus suis Confirmantes, & Testimonium perhibentes ipsos in Hibernia eum & Heredes suos sibi in Reges & Dominos in perpetuum Constituisse.* All the *Archbishops*, *Bishops*, and *Abbots* of *Ireland* came to the King of *England*, and Received him for King and Lord of *Ireland*, swearing Fealty to him and his Heirs for ever. The Kings also and Princes of *Ireland*, did in like manner Receive *Henry*

All Ireland submitted & swore fealty to him.

King

King of *England*, for Lord of *Ireland*, and became his Men, and did him Homage, and swore Fealty to him and his Heirs against all Men. And he received Letters from them with their Seals pendent in manner of Charters, confirming the Kingdom of *Ireland* to him and his Heirs; and Testifying, that they in *Ireland* had Ordain'd him and his Heirs to be their King and Lord of *Ireland* for ever. After which, he return'd into *England* in *April* following, *vizt. April* 1173.

*Ireland* whether ever Conquer'd.

I come now to Enquire into our Second Particular propos'd, *Viz.* Whether *Ireland* might be properly said to be *Conquer'd* by King *Henry* the Second, or by any other Prince in any succeeding Rebellion. And here we are to understand by *Conquest*, an *Acquisition of a Kingdom by Force of Arms, to which Force likewise has been Oppos'd*, if we are to understand Conquest in any other sense, I see not of what Use it can be made against *Irelands* being a Free Country. I know *Conquestus* signifies a Peaceable Acquisition, as well as an Hostile

Conquest it

Subju-

Subjugating of an Enemy. *Vid. Spelman's Glos.* And in this sense *William* the First is call'd the *Conqueror*, and many of our Kings have filed the Epocha *post Conquestum*. And so likewise *Henry* the Second stiled himself *Conquestor & Dominus Hiberniæ*; but that His Conquest was no violent Subjugation of this Kingdom, is manifest from what foregoes: For here we have an Intire and Voluntary Submission of all the Ecclesiastical and Civil States of *Ireland*, to King *Henry* II. without the least Hostile Stroke on any side; We hear not in any of the Chronicles of any Violence on either Part, all was Tranlacted with the greatest Quiet, Tranquility, and Freedom, imaginable. I doubt not but the Barbarous People of the Island at that time were struck with Fear and Terror of King *Hen.* II's Powerful Force which he brought with him; but this their Easie and Voluntary Submissions Exempts them from the Consequents of an *Hostile Conquest*, whatever they are; where there is no Opposition, *such a Conquest* can take no place.

H. 2. stiled himself Conquestor & Dns Hibnie.

Yet no conquest of Ireland but voluntary submission.

I have before taken Notice of *Henry* the II's using the Stile of *Conquestor Hiberniæ* *; I presume no Argument can be drawn from hence, for *Ireland*'s being a Conquer'd Country; for we find that many of the Kings of *England* have used the Æra of *post Conquestum*; *Edward* the Third was the first that used it in *England*, and we frequently meet with *Henricus post Conquestum Quartus*, &c. as taking the *Norman* Invasion of *William* the First, for a *Conquest*. But I believe the People of *England* would take it very ill to be thought a *Conquer'd Nation*, in the sense that some impose it on *Ireland*; And yet we find the same Reason in one Case, as in t'other, if the Argument from the King's Stile of *Conquestor* prevail. Nay, *England* may be said much more properly to be *Conquer'd* by *William* the First, than *Ireland* by *Henry* the Second: For we all know with what Violence and Opposition from *Harrold*, K. *William* obtain'd the Kingdom, after a Bloody Battel nigh *Hastings*. Whereas *Henry* the

* Mr. *Selden* will not allow that ever *H.2.* used this Stile. *Tit. Hon. Par.2. C.5. Sect.26.*

Wm. 1st stild Conqueror yet not allow'd so. Edw. 3d. was the first King that used it, in England.

the Second receiv'd not the least Opposition in *Ireland*, all came in Peaceably, and had large Concessions made them of the like Laws and Liberties with the People of *England*, which they gladly Accepted, as we shall see hereafter. But I am fully satisfy'd, that neither King *William* the First, in his Acquisition of *England*, or *Henry* II. in his Acquest of *Ireland*, obtain'd the least Title to what some would give no *Conquerours*. Tho' for my own part, were they *Conquerours* in a sense never so strict, I should enlarge their Prerogative very little or nothing thereby, as shall appear more fully in the Sequel of this Discourse.

Another Argument for *Henry* the Second's *Hostile Conquest* of *Ireland* is taken from the Opposition which the Natives of *Ireland* gave to the first Adventurers, *Fitz-Stephens*, *Fitzgerald*, and *Earl Strongbow*, and the Battles they fought in assisting *Mac Murough* Prince of *Leinster*, in the Recovery of his Principality.

'Tis,

'Tis certain there were some Conflicts between them and the *Irish*, in which the Latter were constantly beaten; but certainly the Conquests obtain'd by those Adventurers, who came over only by the King's *License* and *Permission*, and not at all by his particular *Command* (as is manifest from the words of the Letters Patents of License recited by *Giraldus Cambrensis*, *Hib. Expug.* pag. 760. *Edit. Francof.* 1603. *Angl. Norm. Hiber. Camd.*) can never be call'd the Conquest of *Henry* the Second, especially considering that *Henry* the Second himself does not appear to have any Design of Coming into *Ireland*, or Obtaining the Dominion thereof, when he gave to his Subjects of *England* this Licenst of Assisting *Mac-Morrogh*. But I conceive rather the contrary appears, by the Stipulations between *Mac-Morrogh* and the Adventurers, and especially between him and *Strongbow*, who was to succeed him in his Principality.

From

From what foregoes, I presume it Appears that *Ireland* cannot properly be said *so to be Conquer'd* by *Henry* the Second, as to give the Parliament of *England* any Jurisdiction over us; it will much more easily Appear, that the *English Victories* in any succeeding *Rebellions* in that Kingdom, give no *Pretence* to a *Conquest*: If every Suppression of a Rebellion may be call'd a *Conquest*, I know not what Country will be excepted. The Rebellions in *England* have been frequent; in the Contests between the Houses of *York* and *Lancaster*, one side or other must needs be Rebellious. I am sure the Commotions in King *Charles* the First's time, are stiled so by most Historians. This Pretence therefore of *Conquest* from *Rebellions*, has so little Colour in it, that I shall not insist longer on it: I know *Conquest* is an hateful word to English Ears, and we have lately seen a Book * undergo a severe Censure, for offering to broach the *Doctrine of Conquest* in the *Free Kingdom* of *England*.

Suppressing Rebellions, whether a Conquest.

* Bishop of *Salisbury's* Pastoral Letter.

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What Title is obtain'd by Conquest.

But, to take off all Pretence from this Title by *Conquest*, I come in the third Place to enquire, *What Title Conquest gives by the Law of Nature and Reason.*

No Title gain'd by an Unjust Conquest.

And in this particular I conceive, that if the Aggressor or Insulter invades a Nation *Unjustly*, he can never thereby have a Right over the Conquered: This I suppose will be readily granted by all men: If a Villain with a Pistol at my Breast, makes me convey my Estate to him, no one will say that this gives him any Right: And yet just such a Title as this has an *Unjust* Conquerour, who with a Sword at my Throat forces me into Submission; that is, forces me to part with my *Natural Estate*, and Birthright, of being govern'd only by Laws to which I give my *Consent*, and not by his Will, or the Will of any other.

What Title by a Just Conquest.

Let us then suppose a *Just* Invader, one that has *Right* on his side to Attack a Nation in an Hostile manner; and that those who oppose

oppoſe him are in the *Wrong*; Let us then ſee what Power he gets, and over whom.

None over the Aſſiſters in the Conqueſt.

Firſt, 'Tis plain he gots by his Conqueſt no Power over thoſe who *Conquered with him*; they that fought on his ſide, whether as private Soldiers or Commanders, cannot ſuffer by the Conqueſt, but muſt at leaſt be as much Freemen, as they were before: If any loſt their Freedom by the *Norman Conqueſt*, (ſuppoſing King *William* the Firſt had *Right* to Invade *England*) it was only the *Saxons* and *Britains*, and not the *Normans* that Conquered with him. In like manner ſuppoſing *Hen.* II. had *Right* to Invade this Iſland, and that he had been oppoſed therein by the Inhabitants, it was only the *Antient Race* of the *Iriſh*, that could ſuffer by this Subjugation; the *Engliſh* and *Britains*, that came over and Conquered with him, retain'd all the Freedoms and Immunities of *Free-born* Subjects; they nor their Deſcendants could not in reaſon loſe theſe, for being Succeſsful and Victorious; for ſo, the ſtate of

Therefor if Irish were conquerd yet English who aſſiſted were not

*Conquerours* and *Conquered* shall be equally *Slaviſh*. Now 'tis manifeſt that the great Body of the preſent People of *Ireland*, are the Progeny of the *Engliſh* and *Britains*, that from time to time have come over into this Kingdom; and there remains but a meer handful of the Antient *Iriſh* at this day; I may ſay, not one in a thouſand: So that if I, or any body elſe, claim the like Freedoms with the Natural Born *Subjects of England*, as being Deſcended from them, it will be impoſſible to proye the contrary. I conclude therefore, That a *Juſt Conquerour* gets no Power, but only over thoſe who have *Actually Aſſiſted* in that *Unjuſt* Force that is uſed againſt him.

None over the Non-Oppoſers

And as thoſe that joyned with the Conquerour in a Juſt Invaſion, have loſt no Right by the Conqueſt; ſo neither have thoſe of the Country who *Oppos'd him not*: This ſeems ſo reaſonable at firſt Propoſal, that it wants little Proof. All that gives Title in a *Juſt* Conqueſt, is the *Oppoſers* uſing *Brutal Force*, and quitting the Law of Reaſon,

Reaſon, and uſing the Law of Violence; whereby the Conquerour is entitled to uſe him as a *Beaſt*; that is, Kill him, or Enſlave him.

Secondly, Let us conſider what Power that is, which a *Rightful Conquerour* has over the Subdued *Oppoſers*: And this we ſhall find extends little farther than over the *Lives* of the *Conquer'd*; I ſay, *little farther* than over their Lives; for how far it extends to their *Eſtates*, and that it extends not at all to Deprive their *Poſterity* of the *Freedoms* and *Immunities* to which all *Mankind* have a *Right*, I ſhall ſhew preſently. That the *Juſt Conquerour* has an Abſolute Power over the *Lives* and *Liberties* of the Conquer'd, appears from hence, Becauſe the Conquer'd, by putting themſelves in a *State of War* by uſing an Unjuſt Force, have thereby *forfeited* their *Lives*. For quitting *Reaſon*, (which is the Rule between Man and Man) and uſing *Force* (which is the way of *Beaſts*) they become liable to be deſtroy'd by him againſt whom they uſe *Force*, as any ſavage wild *Beaſt*

Juſt Conquerour intitled to the Lives of the Oppoſers.

that is Dangerous to his Being.

And this is the Case of *Rebels* in a settled Commonwealth, who forfeit their Lives on this Account. But as for forfeiting their Estates, it depends on the Municipal Laws of the Kingdom. But we are now Enquiring what the Consequents will be between two Contesting Nations.

Which brings me to Consider how far a Just Conquerour has Power over the *Posterity* and *Estates* of the Conquer'd.

Just Conquerour how far impower'd over the Posterity of the Opposers.

As to the *Posterity*, they not having Joyn'd or Assisted in the *Forcible Opposition* of the Conquerours *Just* Arms, can lose no Benefit thereby. 'Tis unreasonable any Man should be punish'd but for his own fault. Man being a free Agent, is only Answerable for his own Demerits; and as it would be highly Unjust to Hang up the Father for the Sons Offence, so the Converse is equally Unjust, that the Son shou'd suffer any Inconvenience for the Fathers Crime.

&

A Father hath not in himself a power over the Life or Liberty of his Child, ſo that no Act of his can poſſibly forfeit it. And tho we find in the Municipal Laws of particular Kingdoms, that the Son loſes the Fathers Eſtate for the Rebellion or other Demerit of the Father, yet this is Conſented and Agreed to, for the Publick Safety, and for deterring the Subjects from certain Enormous Crimes that would be highly prejudicial to the Commonwealth. And to ſuch Conſtitutions the Subjects are bound to ſubmit, having conſented to them, tho it may be unreaſonable to put the like in Execution between *Nation* and *Nation* in the *State of Nature*: For in Settled Governments, Property in Eſtates is Regulated, Bounded and Determined by the Laws of the Commonwealth, conſented to by the People, ſo that in theſe, 'tis no Injuſtice for the Son to loſe his Patrimony for his Fathers Rebellion or other Demerit.

How far over their Estates.

If therefore the *Posterity* of the Conquer'd are not to suffer for the Unjust *Opposition* given to the Victor by their *Ancestors*, we shall find little place for any Power of the Conquerours over the *Estates* of the Subdued. The *Father* by his Miscarriages and Violence can forfeit but his own Life, he involves not his *Children* in his Guilt or Destruction. His *Goods*, which *Nature* (that willeth the Preservation of all *Mankind* as far as possible) hath made to belong to his *Children* to sustain them, do still continue to belong to his *Children*. 'Tis true indeed, it usually happens that *Damage* attends Unjust Force; and as far as the *Repair* of this *Damage* requires it, so far the Rightful Conquerour may invade the *Goods* and *Estate* of the Conquer'd; but when this Damage is made up, his Title to the Goods ceases, and the Residue belongs to the *Wife* and *Children* of the Subdued.

It may seem a strange Doctrine, that any one should have a Power over the *Life* of another Man, and not

not over his *Eſtate*; but this we find every day, for tho' I may *Kill* a Thief that ſets on me in the High-way, yet I may not *take away his Money*; for 'tis the *Brutal Force* the Aggreſſor has uſed, that gives his Adverſary a Right to take away his *Life*, as a noxious Creature. But 'tis only *Damage ſuſtain'd*, that gives Title to another Mans *Goods*.

It muſt be confeſs'd that the Practice of the World is otherwiſe, and we commonly ſee the Conqueror (whether *Juſt* or *Unjuſt*) by the Force he has over the Conquer'd, compels them with a Sword at their Breſt to ſtoop to his Conditions, and ſubmit to ſuch a Government as he pleaſes to Afford them. But we Enquire not now, what is the *Practice*, but what *Right there is to do ſo*. If it be ſaid the Conquer'd ſubmit by their own *Conſent*: Then this allows *Conſent* neceſſary to give the Conquerour a Title to Rule over them. But then we may Enquire whether Promiſes Extorted by *Force* without *Right*, can be thought *Conſent*, and how far they are

Practiſe of Conquerors otherwiſe.

are *Obligatory*; And I humbly conceive they *Bind not at all*. He that *forces* my Horse from me, ought presently to *Restore* him, and I have still a *Right* to retake him: So he that has *forced* a Promise from me, ought presently to *Restore* it, that is, quit me of the *Obligation* of it, or I may chuse whether I will perform it or not: For the *Law of Nature* obliges us only by the *Rules* she prescribes, and therefore cannot oblige me by the *Violation* of her Rules; such is the Extorting any thing from me by *Force*.

From what has been said, I presume it pretty clearly appears that an *Unjust* Conquest gives *no Title* at all; That a *Just* Conquest gives Power only over the *Lives* and *Liberties* of the *Actual Opposers*, but not over their *Posterity* or *Estates*, otherwise than as before is mentioned; and not at all over those that did *not Concur* in the Opposition.

They that desire a more full Disquisition of this Matter, may find it at large in an Incomparable *Treatise* concerning the *True Original*,

*Extent*

*Extent and End of Civil Government*, Chap. 16. This Diſcourſe is ſaid to be written by my Excellent Friend, *JOHN LOCKE*, Eſq; Whether it be ſo or not, I know not; This I am ſure, whoever is the Author, the Greateſt Genius in *Chriſtendom* need not diſown it.

But granting that all we have ſaid in this Matter is *Wrong*, and granting that a Conquerour, whether *Juſt* or *Unjuſt*, obtains an *Abſolute* Arbitrary *Dominion* over the Perſons, Eſtates, Lives, Liberties and Fortunes of all thoſe whom he finds in the Nation, their Wives, Poſterity, *&c.* ſo as to make perpetual *Slaves* of them and their Generations to come; Let us next Enquire whether *Conceſſions* granted by ſuch a Victorious *Hero*, do not bound the Exorbitancy of his Power, and whether he be not Obliged ſtrictly to Obſerve theſe Grants.

Conceſſions granted by a Conquerour, whether Obligatory.

And here I believe no Man of Common Senſe or Juſtice, will Deny it; None that has ever Conſider'd the Law of Nature and

and Nations, can possibly hesitate on this matter; the very Proposing it, strikes the Sense and Common Notions of all Men so forcibly, that it needs no farther proof. I shall therefore insist no longer on it, but hasten to consider how far this is the Case of *Ireland*: And that brings me naturally to the fourth Particular propos'd, *vizt.* To shew by Precedents, Records, and History, what Concessions and Grants have been made from time to time to the People of *Ireland*, and by what steps the Laws of *England* came to be introduced into this Kingdom.

What Concessions have been made from the Crown of *England* to the Kingdom of *Ireland*.

We are told by *Matth. Paris*, Historiographer to *Hen.* III. that *Henry* the Second, a little before he left *Ireland*, in a Publick Assembly and Council of the *Irish* at *Lismore*, did cause the *Irish* to Receive, and swear to be Govern'd by the Laws of *England*: *Rex Henricus* (saith he) *antequam ex Hibernia Rediret apud Lismore Concilium Congregavit ubi Leges Angliæ sunt ab omnibus gratanter receptæ, & Juratoriâ cautione prestitâ Confirmatæ*, Vid. Matth. Paris, ad An. 1172. Vit. H. 2.

By *Henry II.*

And

Irish *Modus Tenendi Parliamentum.*

And not only thus, but if we may give Credit to Sir *Edward Cook*, in the 4th Instit. Cap. 1. and 76. and to the Inscription to the *Irish Modus Tenendi Parliamentum*, it will clearly Appear, that *Henry* the Second did not only settle the the Laws of *England* in *Ireland*, and the Jurisdiction Ecclesiastical there, by the *Voluntary Acceptance* and *Allowance* of the Nobility and Clergy, but did likewise Allow them the Freedom of *Holding of Parliaments* in *Ireland*, as a separate and distinct Kingdom from *England*; and did then send them a *Modus* to Direct them how to Hold their Parliaments there. The Title of which *Modus* runs thus:

Sect 2 H. 2. into Ireland.

Title of it.

" *Henricus Rex Angliæ Con-*
" *questor & Dominus Hiber-*
" *niæ*, &c. *Mittit hanc formam*
" *Archiepiscopis, Episcopis,*
" *Abbatibus, Prioribus, Co-*
" *mitibus, Baronibus, Justi-*
" *ciariis, Vicecomitibus, Ma-*
" *joribus, Præpositis, Ministris*
" *& omnibus Fidelibus suis*
" *Terræ Hiberniæ Tenendi*
" *Parliamentum.* In

*In primis Summonitio Parliamenti præcedere debet per Quadraginta Dies.*

And so forth.

This *Modus* is said to have been sent into *Ireland* by *Hen.* II. for a Direction to Hold their Parliaments there. And the sense of it agrees for the most part with the *Modus Tenendi Parl.* in *England*, said to have been Allowed by *William* the *Conquerour*; when he obtain'd that Kingdom; where 'tis alter'd, 'tis only to fit it the better for the Kingdom of *Ireland*.

English Modus allowd by Wm. Conq.

I know very well the Antiquity of this *Modus*, so said to be Transmitted for *Ireland* by *Hen.* II. is question'd by some Learned Antiquaries, particularly by Mr. *Selden* (*a*) and (*b*) Mr. *Pryn*, who deny also the English *Modus* as well as this. But on the other hand, my Lord Chief Justice *Cook*, in the 4th Instit. pag. 12. and 349. does strenuously Assert them both. And the late Reverend and Learned Dr. *Dopping* Bishop

both Modus's deny'd by Pryn & Selden

(*a*) *Tit. Hon. Par.* 2. C. 5. *Sect.* 26. *Edit. Lond. An.* 1672

(*b*) Against *Cook's* 4th *Instit.* C. 76.

shop of *Meath*, has Published the *Irish Modus*, with a Vindication of its Antiquity and Authority in the Preface.

There seems to me but two Objections of any Moment raised by Mr. *Pryn* against these *Modi*. The One relates both to the *English* and *Irish Modus*; the other chiefly strikes at the *Irish*. He says the Name *Parliament*, so often found in these *Modi*, was not a name for the great Council of *England* known so early as these *Modi* Pretend to. I confess I am not prepared to Disprove this Antiquary in this Particular: But to me it seems reasonable enough to Imagine that the Name *Parliament*, came in with *William* the *Conqueror*: 'Tis a Word perfectly French, and I see no reason to doubt it's Coming in with the *Normans*. The other Objection affects our *Irish Modus*, for he tells us, That *Sheriffs* were not established in *Ireland* in *Henry* II's. time, when this *Modus* was pretended to be sent hither, yet we find the Word *Vicecomes* therein. To this I can only Answer, That *Hen.* II. intend-

intending to Eſtabliſh in *Ireland* the Engliſh form of Government, as the firſt, and Chief ſtep thereto, he ſent them Directions for Holding of Parliaments, Deſigning afterwards by degrees and in due time to ſettle the other Conſtitutions, agreable to the Model of *England*. If therefore *England* had then *Sheriffs*, we need not wonder to find them named in the *Iriſh Modus*, tho they were not as yet eſtabliſh'd amongſt us, for they were deſigned to be appointed ſoon after, and before the *Modus* could be put regularly in execution; and accordingly we find them eſtabliſh'd in ſome Counties of *Ireland* in *King Johns* Time.

This *Iriſh Modus* is ſaid to have been in the Cuſtody of Sir *Chriſtopher Preſton* of *Clane* in *Ireland*, *An.* 6. *Hen.* 4. and by Sir *John Talbot* Lord Lieutenant of *Ireland*, under King *Hen.*4. It was Exemplified by *Inſpeximus* under the great Seal of *Ireland*, and the Exemplification was ſometimes in the Hands of Mr. *Hackwel of Lincolns* Inn, and by him was Communicated to Mr. *Selden*. The Tenor of which Exemplification runs thus. *Henricus*

*Henricus Dei Gratia Rex Angliæ & Franciæ, & Dominus* Hiberniæ, *omnibus ad quos presentes Literæ pervenerint salutem Inspeximus Tenorem Diversorum Articulorum in quodam Rotulo Pergameneo Scriptorum cum* Christophero Preston, *Milite Tempore Arrestationis suæ apud Villam de* Clare, *per Deputatum Dilecti & Fidelis nostri Johannes Talbot de* Halomshire *Chevaler locum nostrum Tenentis Terræ nostræ Hiberniæ, nuper factæ Inventorum ac coram nobis & Concilio nostro in eadem terræ nostra apud Villam de* Trim. *Nono die Januarii ultimo præteriti in hæc verba,*

*Modus Tenendi Parliamenta*

*Henricus Rex Angliæ, Consultor & Dominus Hiberniæ, Mittit hanc formam Archiepiscopis*, &c. and so as before; *Et omnibus Fidelibus suis Terræ Hiberniæ in primis Summonitio*, &c. and then

then follows the *Modus*, agreeable in moſt things with that of *England*, only fitted to *Ireland*. Then the Exemplification concludes:

*Nos autem tenores Articulorum prædictorum de Aſſenſu præfati Locum tenentis & Concilii prædicti tenore præſentium duximus Exemplificandum & has Literas noſtras fieri fecimus Patentes. Teſte Præfato Locum noſtrum tenente apud Trim. 12 die Januarii Anno Regni noſtri ſexto.*

*Per ipſum Locum tenentem & Concilium.*

Now we can hardly think it credible, (ſays the Biſhop of *Meath*) that an *Exemplification* could have been made ſo ſolemnly of it by King *Henry* the Fourth, and that it ſhould refer to a *Modus* tranſmitted into *Ireland* by King *Henry* II. and Affirm that it was produced before the Lord Lieutenant and Council at *Trym*, if no ſuch thing had been Done: This were to call in queſtion the Truth of all former Records

cords and Transactions, and make the Exemplification contain an Egregious Falshood in the body of it.

The Reverend Bishop of *Meath*, in his fore-cited Preface does believe that he had obtain'd the very Original Record, said by my Lord *Cook* to have been in the Hands of Sir *Christopher Preston*: It came to that Learned Prelates Hands amongst other Papers and Manuscripts of Sir *William Domviles*, late Attorney General in this Kingdom, who in his Life-time, upon an occasional Discourse with the Bishop concerning It, told him that this Record was bestow'd on him (Sir *W. Domvile*) by Sir *James Cuffe*, late Deputy Vice-Treasurer of *Ireland*, that Sir *James* found it among the Papers of Sir *Francis Aungier*, Master of the Rolls in this Kingdom; and the present Earl of *Longford* (Grandson to the said Sir *Francis Aungier*) told the Bishop, that his said Grandfather had it out of the Treasury of *Waterford*.

Whilst I write this, I have this very Record now before me, from the Hands of the said Bishop of *Meath*'s Son, my Nephew, *Samuel Dopping*; and I must confess it has a Venerable Antient Appearance, but whether it be the True Original Record, I leave on the Arguments produced for its Credit by the said Bishop.

Parliaments very early in *Ireland*.

This I am sure of, that whether this be the very Record Transmitted hither by King *Henry* the Second, or not; yet 'tis most certain from the Unanimous Concessions of all the fore-mentioned Antiquaries, *Cook, Selden, Pryn, &c.* That we have had Parliaments in *Ireland* very soon after the Invasion of *Henry* II. For *Pryn* confesses that (a) King *Hen.* II. after his Conquest of *Ireland*, and the General Voluntary Submission, Homages, and Fealties of most of the *Irish* Kings, Prelates, Nobles, Cities and People, to him, as to their Soveraign Lord and King, *Anno* 1170, (it should be 1172.) held therein a General Council of the Clergy at

(a) Against the 4th Inst. c. 76. p. 249.

at *Caſhal*, wherein he Rectify'd many Abuſes in the Church, and Eſtabliſh'd ſundry Eccleſiaſtical Laws, agreeable to thoſe in the Church of *England*; *Eccleſiæ illius ſtatum ad Anglicanæ Eccleſiæ formam Redigere Modis omnibus elaborando*; To which the *Iriſh* Clergy promis'd Conformity, and to obſerve them for time to come, as (*a*) *Giraldus Cambrenſis*, who was then in *Ireland*, and other (*b*) Hiſtorians, relate: *Et ut in ſingulis Obſervatio ſimilis Regnum Colligaret utrumque* (that is *England* and *Ireland*) *paſſim omnes unanimi voluntate communi Aſſenſu, Pari deſiderio Regis imperio ſe ſubjiciunt, omnibus igitur hoc modo Conſummatis, in Concilio habito apud Liſmore Leges Angliæ ab omnibus ſunt gratantur receptæ, & juratoriâ cautione præſtitâ Confirmatæ*, ſays *Math. Paris*.

(*a*) *Togograph Hibern.* l 3. c. 18 *Hib. Expug.* l. 11. c. 33, 34.

(b) *Hoveden Annal pars poſt.* p. 302. *Brampton Chr. Col.* 1071. *Knighton de Even. Angl.* l. c. c. 10 col. 2394, 2395. *Pol. Virg. Hiſt. Angl.* l. 13. *Radul. de Diceto. Walſingham*, &c.

Can any Conceſſion in the World be more plain and free than this? We have heard of late much Talk in *England* of an *Original Compact* between the *King* and *People* of *England*; I am ſure 'tis not poſſible to ſhew a more fair *Origi-*

Original Compact for *Ireland*.

*nal Compact* between a *King* and *People*, than this between *Henry* the Second, and the *People* of *Ireland*, *That they should Enjoy the like Liberties and Immunities, and be Govern'd by the same Mild Laws, both Civil and Ecclesiastical, as the People of England.*

From all which, It is manifest that there were no Laws Impos'd on the People of *Ireland*, by any Authority of the Parliament of *England*; nor any Laws introduced into that Kingdom by *Henry* the Second, but by the *Consent* and *Allowance* of the People of *Ireland*: For both the Civil and Ecclesiastical State were settled there *Regiæ sublimitatis Authoritate*, solely by the Kings Authority, *and their own good Wills*, as the *Irish* Statute, 11 *Eliz.* c. 1. expresses it. And not only the *Laws* of *England*, but the manner of *Holding Parliaments* in *Ireland* to make Laws of their own (which is the *Foundation* and *Bulwark* of the Peoples *Liberties* and *Properties*) was Directed and Established there by *Henry* the Second, as if he were Resolved

that

that no other Perſon or Perſons ſhould be the Founders of the Government of *Ireland*, but himſelf and the *Conſent* of the People, who ſubmitted themſelves to him againſt all Perſons whatſoever.

Let us now ſee by what farther Degrees the Government of *Ireland* grew up Conformable to that of *England*.

About the Twenty-third year of *Henry* the Second, (which was within Five years after his Return from *Ireland*) he created his younger Son *John*, *King of Ireland*, at a Parliament held at *Oxford*. Soon after *King John* being then about Twelve Years of Age, came into *Ireland*, from *Milford* to *Waterford*, as his Father had formerly done. The *Iriſh* Nobility and Gentry immediately repaired to him; but being Received by him and his Retinue with ſome Scorn and Deriſion, by reaſon of their long rude Beards, *quas more Patrio grandes habebant & prolixas*, (ſays *Giraldus Cambrenſis*, *Hib. Expug. Cap.* 35.) they took ſuch Offence

*King John made King of Ireland.*

thereat, that they departed in much Diſcontent; which was the occaſion of the young Kings ſaying ſo ſhort a time in *Ireland*, as he did this his firſt time of being here.

By this *Ireland* made an Abſolute ſeparate Kingdom.

And here, before we proceed any farther, we ſhall obſerve, That by this Donation of the *Kingdom* of *Ireland* to *King John*, *Ireland* was moſt eminently ſet apart again, as a *Separate* and *Diſtinct Kingdom* by it ſelf from the Kingdom of *England*; and did ſo continue, until the Kingdom of *England* Deſcended and came unto *King John*, after the Death of his Brother *Richard* the Firſt, King of *England*, which was about Twenty two years after his being made King of *Ireland*; during which ſpace of Twenty two years, both whilſt his Father *Henry* the Second, and his Brother *Richard* the Firſt, were living and Reigning, King *John* made divers Grants and Charters to his Subjects of *Ireland*, which are yet in being in this Kingdom; wherein he ſtiles himſelf *Dominus Hiberniæ*, (the conſtant Stile till *Henry* the Eighth's time)

time) and in others, *Dominus Hiberniæ & Comes Meritoniæ.* By which Charters both the City of *Dublin*, and divers other Corporations enjoy many Priviledges and Franchiſes to this day. But after the ſaid Grant of the Kingdom of *Ireland* to King *John*, neither his Father *Henry* II. nor his Brother King *Richard* I. Kings of *England*, ever ſtiled themſelves, during their Lives, *King* or *Lord* of *Ireland*; for the *Dominion* and *Regality* of *Ireland* was wholly and ſeparately veſted in K. *John*, being abſolutely Granted unto him without any Reſervation. And he being Created King in the Parliament at *Oxford*, under the Stile and Title of *Lord of Ireland*, Enjoy'd all manner of *Kingly Juriſdiction*, *Preheminence*, and *Authority Royal*, belonging unto the *Imperial State* and *Majeſty of a King*, as are the Expreſs words of the *Iriſh* Statute, 33 *Hen.* VIII. c. 1. by which Statute the Stile of *Dominus* was changed to that of *Rex Hiberniæ.*

Let us then ſuppoſe that *Richard* the Firſt, King *John*'s Elder Brother,

Brother, had not died without Iſſue, but that his Progeny had ſat on the Throne of *England*, in a Continued Succeſſion to this Day: Let us ſuppoſe likewiſe the ſame of King *John's* Progeny, in relation to the Throne of *Ireland*; where then had been the *Subordination* of *Ireland* to the *Parliament*, or even to the *King* of *England*? Certainly no ſuch thing could have been then pretended: Therefore if any ſuch *Subordination* there be, it muſt ariſe from ſomething that followed *after* the Deſcent of *England*, to King *John*; for *by* that *Deſcent England* might as properly be *Subordinate* to *Ireland*, as the converſe; *Ireland* being veſted in the Royal Perſon of King *John*, Two and Twenty years before his Acceſſion to the Crown of *England*, and being a more *Ancient Kingdom* than the Kingdom of *England*. As the Engliſh Orators in the Council of Conſtance, *An.* 1417 (*a*) confeſs'd and alledged, as an Argument in the Conteſt between *Henry* the Fifth's Legates, and thoſe of *Charles* the Sixth King of *France*, for *Precedence*: *Satis Conſtat* (ſay they)

(*a*) *Seldens Tit. Hon. Par.* 1. *C.* 8 *Sect.* 5. *Uſher* Archbiſhop of *Armagh*, of the Religion of the Antient *Iriſh*, *Cap.* 11.

they) (b) *Secundum Albertum Magnum & Bartholomeum de Proprietatibus Rerum, quod toto Mundo in tres partes Divisо, scilicet in Europam, Asiam & Africam* (for *America* was not then Discovered) *Europa in quatuor Dividitur Regna scilicet, Primum Romanum, Secundum Constantinopolitanum, Tertium Regnum* Hiberniæ (*quod jam translatum est in Anglos*) *& Quartum Regnum Hispaniæ. Ex quo patet, quod Rex Angliæ & Regnum suum sunt de Eminentioribus Antiquioribus Regibus & Regnis totius Europæ.* The *Antiquity* and *Precedence* of the King of *England*, was allo'wd him wholly on the Account of his Kingdom of *Ireland*.

(b) *Act. Concil. Constant. Sess.* 28. *MS. in Bib. Reg.* not in the Printed Acts.

Perhaps it will be said, That this *Subordination* of the Kingdom of *Ireland*, to the Kingdom of *England*, proceeds from *Ireland*'s being Annex'd to, and as it were united with the Imperial Crown of *England*, by several Acts of Parliament both in *England* and *Ireland*, since King *Johns* time. But how farr this Operates, I shall Enquire more fully hereafter; I shall only at present Observe, that I conceive little more

*Ireland* in what sense Annex'd to *England*.

more is Effected by these Statutes Than that *Ireland* shall not be *Alien'd* or *Separated* from the King of *England*, who cannot hereby dispose of it otherwise than in *Legal Succession* along with *England*; and that whoever is *King of England*, is *ipso facto King of Ireland*, and the Subjects of *Ireland* are oblig'd to Obey him as their Liege Lord.

King *John* comes a second time into *Ireland*. The People submit to him

To proceed therefore. After both Crowns were united, on the Death of *Richard* the First without Issue, in the Royal Person of King *John*: He, about the Twelfth Year of his Reign of *England*, went again into *Ireland*, *viz.* the Twenty Eight day of *June*, 1210. and *Math. Paris* tells us, pag. 220. *Cum Venisset ad Dublinensem Civitatem Occurrerunt ei ibidem plus quam 20 Reguli illius Regionis qui omnes Timore maximo preterriti homagium ei & Fidelitatem fecerunt. Fecit quoque Rex ibidem*, Construere Leges & Consuetudines Anglicanas, *ponens Vicecomites aliosque Ministros, qui populum Regni illius* juxta Leges Anglicanas Judicarent.

His

His Son King *Henry* the Third came to the Crown the Nineteenth of *October* 1216. and in *November* following he Granted to *Ireland* a *Magna Charta*, Dated at *Briſtol* 12 *November*, the Firſt Year of his Reign. 'Tis Prefaced, *that for the Honour of God, and Advancement of Holy Church, by the Advice of his Council of England*, (whoſe names are particularly recited) He makes the following *Grant to Ireland*; And then goes on Exactly Agreeable to the *Magna Charta* which he granted to *England*; only in ours we have *Civitas Dublin*, & *Avenliffee*, inſtead of *Civitas London*, and *Thames* is with other Alterations of the like kind where Needful. But ours is Eight years older than that which he granted to *England*, it not being till the Ninth Year of his Reign, and ours is the Firſt Year. This *Magna Charta* of *Ireland* Concludes thus, *Quia vero ſigillum nondum habuimus preſentem Cartam Sigillis Venerabilis Patris noſtri Domini Guall. Apoſt. Sedis Legati & Willelmi Mareſchalli Comitis Pembrooke Rectoris noſtri & Regni noſtri fecimus Sigillari. Teſtibus omnibus prænominatis & alijs Multis Dat per Manus Prædictorum*

Concession from *Hen. III.*

*Domini*

*Domini Legati & Willelmi Mareſcalli. Apud Briſtol Duodecimo die Novembr. Regni noſtri Anno Primo.* An Antient Coppy of this *Magna Charta of Ireland* is to be found in the *Red Book* of the *Exchequer Dublin.*

(a) *Pryn* againſt the 4th Inſt.. c. 76. p. 250.

In *February* following in the Firſt Year likewiſe of his Reign, by Advice of all his Faithful Counſellors in *England*, to gratify the *Iriſh* (ſays (a) *Pryn*) for their eminent Loyalty to his Father and Him, he granted them out of his *Special Grace*, that they and their Heirs for ever ſhould enjoy the *Liberties* granted by his Father and Himſelf to the Realm of *England*; which he Reduced into Writing, and ſent Seal'd thither under the Seal of the Popes Legat, and W. Earl Marſhal his Governour, becauſe he had then no Seal of his own. This as I conceive Refers to the forementiond *Magna Charta Hiberniæ.* The Record as Recited by Mr. *Pryn*, here follows.

" Rex

"Rex Archiepiſcopis, Epiſ- *Pa. 1 H.III.*
"copis, Abbatibus, Comiti- *m. 13. intus*
"bus, Baronibus, Militibus
"& Libere Tenentibus, &
"omnibus Fidelibus ſuis per
"Hiberniam Conſtitutis, Sa-
"lutem: Fidelitatem veſtram
"in Domino Commendantes
"quam Domino Patri noſtro
"ſemper Exhibuiſtis & nobis
"eſtis diebus noſtris Exhibi-
"turi: Volumus quod in
"ſignum Fidelitatis veſtræ,
"tam præclaræ, tam Inſignis
"Libertatibus Regno noſtro
"Angliæ a Patre noſtro & no-
"bis Conceſſis, de gratia no-
"ſtra & Dono in Regno no-
"ſtro Hiberniæ quadcatis vos
"& veſtri Hæredes in perpe-
"tuum. Quas Diſtincte
"in Scriptum Reductas de
"Communi Conſilio omni-
"um Fidelium noſtrorum vo-
"bis Mittimus Signatas Si-
"gillis Domini noſtri G. Apo-
"ſtolicæ Sedis Legati & Fi-
"delis noſtri Com. W. Ma-
"reſc. Rectoris noſtri & Reg-
"ni noſtri quia Sigillum non-
"dum

" dum habuimus, eadem
" processu temporis de Majori
" Consilio proprio Sigillo Sig-
" naturi.

" Teste apud Glouc. 6 Februar.

Here we have a free Grant of all the *Liberties of England* to the *People* of *Ireland*. But we know the *Liberties* of Englishmen are Founded on that Universal *Law of Nature*, that ought to prevail throughout the whole World, *of being Governd only by such Laws to which they give their own Consent by their Representatives in Parliament.*"

Record out of Mr. *Petyt* of the Antiquity of Parliaments in *Ireland.*

And here, before I proceed farther, I shall take Notice, That in the late Raised Controversie, *Whether the House of Commons were an Essential part of Parliament*, before the 49th year of *Henry* the Third; The Learned *Mr. Petyt*, Keeper of the Records in the Tower, in his Book on that Subject, pag. 1. Deduces his Argument *from the Comparison of the Antient* Generale Concilium, *or* Parliament *of Ireland*,

*land instanced An.* 38 *Hen.* III. *with the Parliament in England, wherein the* Citizens *and* Burgesses *were; which was Eleven years before the pretended beginning of the Commons in England.*

For thus we find it in that Author.

"As great a Right and Privilege "surely was and ought to be al-"low'd to the *English* Subjects, as "to the *Irish*, before the 49th of "*Hen.* III. And if that be admit-"ted, and that their (the *Irish*) "*Commune Concilium*, or Parliament, "had its Platform from ours (the "English) as I think will not be "Deny'd by any that have consi-"der'd the History and Records "touching that Land (*Ireland*) we "shall find the ensuing Records, "*Ann.* 38 *Hen.* III. clearly evince "that the Citizens and Burgesses "were then a part of their (the "*Irish*) Great Council or Parlia-"ment.

"That King being in *partibus* "*Transmarinis*, and the Queen being "left Regent, she sends Writs (or a

*Rot.* 38 *H.* III. *in* 4. *Hiberniæ*

" Letter ] in the Kings Name, di-
" rected *Archiepiſcopis, Epiſcopis,*
" *Abbatibus, Prioribus, Comitibus,*
" *Baronibus, Militibus, Liberis Ho-*
" *minibus,* Civibus & Burgenſi-
" bus, *Terræ ſuæ Hiberniæ* ; tell-
" ing them that, *Mittimus Fratrem*
" *Nicholaum de Sancto Neoto, Fratrem*
" *Hoſpitii Sancti Johannis Jeruſa-*
" *lem in Anglia ad partes Hiberniæ*
" *ad expriendum vobis* ( together
" with *J. Fitz-Geoffery* the Kings
" Juſtice ) the State of his Land of
" *Vaſcony*, endanger'd by the Ho-
" ſtile Invaſion of the King of *Ca-*
" *ſtile, qui nullo Jure ſed potentia*
" *ſua Confiſus Terram noſtram Vaſ-*
" *coniæ per ipſius Fortitudinem,*
" *a manibus noſtris Auferre & a Do-*
" *minio Regni Angliæ ſegregare Pro-*
" *ponit.* And therefore *univerſita-*
" *tem Veſtram Quanta poſſumus Af-*
" *fectione Rogantes quatenus nos*
" *& jura noſtra totaliter indefenſa*
" *non deſerentes nobis in tanto peri-*
" *culo quantumcunque poteritis de*
" Gente & Pecunia *ſubveniatis* ;
" which would turn to their Ever-
" laſting Honour ; concluding,
" *His noſtris Auguſtiis taliter Compa-*
" *tientes, quod nos & Hæredes no-*
" *ſtri*

"*stri vobis & Hæredibus vestris su-*
"*mus non immerito Obligati. Te-*
"*ste Regina, & R. Comite Cornubiæ,*
"*apud* Windesor, 17 *die Februar.*

*Per Reginam.*

Thus far Mr. *Petyt.*

Here we have a Letter from the Queen Regent to the *Parliament* in *Ireland*, in an humble manner beseeching them for an Aid of *Men* and *Money* against the King of *Castiles* Hostile Invasion of *Gascony*; from whence we may perceive that in those days, no more than at present, *Men* and *Money* could not be Rais'd but by *Consent of Parliament*. I have been the more particular in Transcribing this Passage out of Mr. *Petyt*, to shew that we have as Antient and Express an Authority for our present Constitution of Parliaments in *Ireland*, as can be shewn in *England*. And I believe will not be thought Adviseable in these latter Days, to break in upon *Old Settled Constitutions*: No

one knows how fatal the Conſequents of that may be.

Farther Conceſſions from *Hen. III.*

To return therefore where we Digreſs'd. *Henry* the Third, about the Twelfth year of his Reign, did ſpecially Impower *Richard de Burgh*, then *Juſtice* of *Ireland*, at a certain day and place, to ſummon all the Archbiſhops, Biſhops, Abbots, Priors, Earls, Barons, Knights, Freeholders and Sheriffs of each County, and before them to cauſe to be Read the Charter of his Father King *John*, whereunto his Seal was Appendant, whereby he had granted unto them the *Laws* and *Cuſtoms* of *England*, and unto which they ſwore Obedience: And that he ſhould cauſe the ſame Laws to be obſerved and Proclaimed in the ſeveral Counties of *Ireland*, that ſo none preſume to do contrary to the Kings Command. The Record I have taken out of Mr. (*a*) *Prynne* in theſe words:

(*b*) Againſt *Cook's* 4th Inſtit. p. 252.

*Clauſ. 12 H. III. in 8 de Legibus & Conſuetudinibus Obſervandis in Hibern.*

" Rex Dilecto & Fideli ſuo
" Richardo de Burgo Juſti
" ſuo Hibern. Salutem. Ma
" damus vobis firmiter pr
" cipien

" cipientes quatenus certo die
" & Loco faciatis venire co-
" ram vobis Archiepiſcopos
" Epiſcopos Abbates Priores
" Comites & Barones Milites
" & libere Tenentes & Balli-
" vos ſingulorum Comitatum
" & coram eis Publice legi
" faciatis Chartam Domini J.
" Regis Patris noſtri cui Si-
" gillum ſuum appenſum eſt
" quam fieri fecit & jurari a
" Magnatibus Hibern. de Le-
" gibus & Conſuetudinis An-
" gliæ Obſervandis in Hiber-
" nia. Et præcipiatis eis ex
" parte noſtra quod Leges il-
" las & Conſuetudines in
" Charta prædicta contentas
" de cætero firmiter teneant &
" obſervent & hoc idem per
" ſingulos Commitatus Hi-
" berniæ clamari faciatis &
" teneri prohibentes firmiter
" ex parte noſtra & ſuper foris
" facturam noſtram nequis
" contra hoc Mandatum no-
" ſtrum venire præſumat, *&c.*
" *Teſte Me ipſo Apud Weſtm'* 8
" *die Maii An. Reg. noſtri* 12.

By what foregoes, I presume it plainly appears, that by three several Establishments under the three first Kings of *Ireland* of the *Norman Race*, the *Laws and Liberties of the People of England, were granted to the People of Ireland.* And that neither of these three Kings Established those Laws in *Ireland* by any *Power* of the *Parliament* of *England*, but by the free *Consent*, *Allowance* and *Acceptance* of the *People* of *Ireland*.

Recapitulation.

*Hen.* II. first introduced the Laws of *England* into *Ireland*, in a Publick Assembly of the *Irish* at *Lismore*, and Allowed them the *Freedom* of *Parliaments* to be held in *Ireland*, as they were held in *England*.

King *John* at the *Request*, and by the *Consent* of the *Irish*, did appoint the Laws of *England* to be of Force in *Ireland*; and tho' he did not this till the Twelfth year of his Reign of *England*, yet he did it not as *King of England*, but as *Lord* of *Ireland*: For the Crown of *England* came to him by *Descent* from

from his Brother *Richard*, who had *no Regal Power* in *Ireland*; and what his Brother had not, could not descend to him.

*Henry* the Third in the first year of his Reign gave *Ireland* a *Magna Charta*; and in the Twelfth year of his Reign did provide, That all the Laws of *England* should be observ'd in *Ireland*; and that the Charter granted to the *Irish* by his Father King *John* under his Seal, when he was in that Kingdom, should be kept inviolably.

And from the Days of these Three Kings, have *England* and *Ireland* been both Govern'd by the like Forms of Government under one and the same Supreme Head, *the King of England*; yet so, as both Kingdoms remain'd Separate and Distinct in their several Jurisdictions under that *One Head*, as are the Kingdoms of *England* and *Scotland* at this day, without any *Subordination* of the One to the Other.

It were endless to mention all

Records and Precedents that might be quoted for the Eſtabliſhment of the Laws of *England* in *Ireland*; I ſhall therefore enter no farther into that Matter, but therein refer to Lord Chief Juſtice *Cook*, (a) *Pryn*, (b) *Reyly*, (c) &c.

(a) *Fourth Inſtit.*
(b) Againſt the 4th Inſtit.
(c) *Placita Parliamentaria.*

English Laws Eſtabliſhed in *Ireland.*

If now we Enquire, *What were thoſe Laws of England that became thus Eſtabliſhed in Ireland?* Surely we muſt firſt reckon the Great *Law of Parliaments*, which *England* ſo juſtly Challenges, and all *Mankind* have a *Right* to. By the *Law of Parliament*, I mean that Law whereby all Laws receive their Sanction, *The Free Debates and Conſent of the People, by Themſelves, or their Choſen Repreſentatives.* That this was a main Branch of the Engliſh Law Eſtabliſhed in this Kingdom, and the very Foundation of our Future Legiſlature, appears manifeſt from Parliaments being ſo early convok'd in *Ireland*, as the fore-mention'd Precedents expreſs.

Law of Parliament.

Mr. *Pryn* acknowledges one in *Hen.*II's time, (*pag.*259. againſt the 4th *Inſtit.*) but makes a very falſe

Conclu-

Conclusion, that there appears no Footsteps of a Parliament afterwards, till the third year of *Edward* the Second, because the Acts of that Parliament are the first that are Printed in our Irish Statute-Book: For so we may argue the Parliaments of *England* to be of later Date than pretended, when we find the first Printed Acts in *Keeble* to be no older than the 9th of *Hen.* III. Whereas 'tis most certain, that Parliaments have been held in *England* some Ages before that.

Common Law.

After this *Great Law of Parliaments*, we may reckon the *Common Law* of *England*, whether it relates to Regulating and Setling of *Property*, and Estates in Goods or Land, or to the *Judiciary* and *Executive* parts of the Law, and the Ministers and Process thereof, or to *Criminal* Cases. These surely were all Establish'd in this Country, by the three first Kings of *Ireland* of the *Norman* Race.

Statute Law.

Let us now consider the state of the *Statute Laws* of *England* under these

these three Kings, and their Predecessors: For by the Irish Voluntary Submission to, and Acceptance of the Laws and Government of *England*, we must repute them to have submitted themselves to these likewise; till a Regular Legislature was Establish'd amongst them, in pursuance of that Submission and Voluntary Acceptance.

Statute-Law of *England* from the Norman Conquest to *Hen. III.*

And here we shall find, that in those Times, *viz.* from the *Norman* Conquest to *Henry* the Third's time inclusive, the Statute-Laws of *England* were very few and slender. 'Tis true, that before the 12th of *Hen.* III. we find amongst the English Historians frequent mention of the Laws of *Edward the Confessor*, *William the Conquerour*, *Hen.* I. *Hen.* II. *King John*, and *Hen.* III. All which are only *Charters*, or several Grants of *Liberties* from the King; which nevertheless had the force of Acts of Parliament, and laid as great Obligations both upon Prince and People, as Acts of Parliament do at this day: Whereof we may read several Proofs in the *Princes Case*, *Cook*'s 8th *Report*. But these were only

only so many *Confirmations* of each other, and all of them *Sanctions of the Common Laws* and *Liberties* of the People of *England*, *ab Antiquo Usitatæ & comprobatæ per totam terram & in quibus ipsi & eorum Patres nati & nutriti sunt*, as the words of the Manuscript *Chronicle of Litchfield* expresses it.

The Laws of *Edward the Confessor*, held in so great Veneration in Antient Times, *& per universum Regnum corroboratæ & confirmatæ, prius inventæ & Constitutæ fuerunt Tempore Regis Edgari Avi sui. Verum tamen post mortem ipsius Regis* Edgari, *usque ad Coronationem Sancti Regis* Edwardi (which was 67 years) *prædictæ Leges Sopitæ sunt & penitus intermissæ. Sed postquam Rex* Edwardus *in Regno sublimatus fuit Consilio Baronum Angliæ Legem illam sopitam Excitavit, Excitam Reparavit, Reparatam Decoravit, Decoratam Confirmavit; & confirmatæ vocantur* Lex Sancti Regis Edwardi, *non quod* ipse primus eam ad inveniſſet; ſed quod Reparavit, Reſtituitque, (a) as the ſaid *Litchfield* Chronicle has it. Theſe Laws

Law of *Edward* the Confeſſor.

(a) *Selden Nexus & ſpecileg. ad eadmerum*, pag. 171

of

of *Edward the Confessor* were transcribed by *Ingulphus Abbot of Croyland* under *William the Conqueror*, and are annexed to his History.

Of *Wil. Conq.* The Laws of *William the Conqueror* are but a *Confirmation* of the Laws of *Edward the Confessor*, with some small *alterations*, as the very Letter of those Laws themselves expres it. (b) *Hoc quoque præcipimus ut omnes habeant & teneant Leges Edwardi Regis in omnibus Rebus adauctis his quas constituimus ad Utilitatem Anglorum.*

(b) *Leges W. 1. Cap. 63. apud Selden in notis ad eadmerum p. 192.*

Of *Hen. I.* The Laws of *Henry* I. which are in the *Red Book of the Exchequer*, in the custody of the Kings *Remembrancer* in *England*, are but a summary confirmation both of the Laws of *Edward the Confessor* and *William the First*, as the Charter it self expresses it, (c) *Lagam Regis* Edwardi *vobis Reddo cum illis emendationibus quibus Pater meus emendavit Consilio Baronum suorum.*

(c) *Vid. Selden ut supra.*

Of *Hen II.* The Laws of *Henry* II. called *Constitutiones Clarendoniæ*, and the *Assize of Clarendon* in the 2*d* part of

*Cooks*

*Cooks Inſt.* p. 6. are all but confirmations and vindications of the King's juſt Prerogative againſt the Uſurpations of the Pope and Clergy: As we find at large in *Chron. Gervaſii. Doroborn.* p. 1387. Edit. Lond. an. 1652.

The Laws of *King John*, called The *Great Charter of King John*, granted in the 17*th* Year of his Reign, upon the Agreement made between him and his Barons at *Running-Mead* between *Staines* and *Windſor*, was but a *Confirmation* of the Laws of *Edward the Confeſſor* and *Henry the Firſt*, as (*d*) *Mat. Paris* relates it. *Anno Regis* Johannis 17. *venientes ad Regem magnates petierunt quaſdam Libertates & Leges Regis* Edwardi *cum aliis libertatibus ſibi & Regno Angliæ & Eccleſiæ Anglicanæ conceſſis confirmari prout in Charta Regis* Hen I. *aſcriptæ continentur.* The ſame Hiſtorian gives us alſo at large both *Charta Libertatum*, and *Charta de Foreſta*, which are not extant in the Rolls of thoſe times, nor to be found in any till the 28*th* of *Edward* I. and that but by *inſpeximus*.

of K. *John.*

(d) *Mat. Paris ad an.* 1215. *pag.* 253, *&c.*

The

Of *Hen. III.* The Laws of *Henry* III. contain'd in *Magna Charta* and *Charta de Forresta*, both which are called *Magnæ Chartæ Libertatis Angliæ*, and were eſtabliſh'd about the 9*th* Year of *Henry* III. are for the moſt part but *declaratory* of the common municipal Laws of *England*, and that too no *new* declaration thereof; for King *John* in the 17*th* year of his Reign had granted the like before, which was alſo call'd *Magna Charta*.

(a) *Cook*'s Pref. to the 2d *Inſt.* (*a*) And by the Engliſh Statute 25 *Ed.* 1. *c.* 1. it is Enacted, That the *Great Charter*, and the *Charter of the Forreſt* be taken as the *Common Law of England*.

By what foregoes, I conceive, it is very clear, That all the *Charters* and *Grants of Liberties* from *Edward the Confeſſor's* time down to the 9*th* of *Henry the Third* were but *Confirmations* one of another, and all of them *Declarations*, and Confirmations of the *Common Law of England*. And by the ſeveral Eſtabliſhments, which we have formerly mention'd, of the Laws of *England* to be of force in *Ireland*:

Firſt

Firſt, in the 13th of *Henry* II. Secondly, in the 12th of King *John*. Thirdly, in the 12th of *Henry* III. All thoſe Laws and Cuſtoms of *England*, which by thoſe ſeveral Charters were *Declared* and *Confirmed* to be the Laws of *England*, were eſtabliſh'd to be of force in *Ireland*. And thus *Ireland* came to be govern'd by one and the ſame *Common Law* with *England*; and thoſe Laws continue as part of the municipal and fundamental Laws of both Kingdoms to this day.

Engl. Statutes ſince the 9th. *Hen. III.* introduced in *Ireland*.

It now remains that we enquire, How the *Statute Laws* and *Acts of Parliament* made in *England* ſince the 9th of *Henry the Third* came to be of force in *Ireland*; And whether all or any of them, and which, are in force here, and when and how they came to be ſo.

And the firſt Precedent that occurs in our Books, of Acts of Parliament in *Ireland* particularly mentioning and confirming ſpecial Acts of Parliament in *England*, is found in a Marginal Note of Sir *Richard Bolton*'s formerly Lord Chief Baron of

of the *Exchequer* in *Ireland*, affixed in his Edition of the *Irish Statutes* to Stat. 10 *Hen.* 7. *Cap.* 22. to this purport, That in 13 *Edw.* II. *by Parliament in this Realm of* Ireland *the Statutes of* Merton, *made the* 20th of Hen. II. *and the Statutes of* Marlbridge, *made the* 52 *of* Henry *the Third*; *The Statute of* Westminster *the First, made the* 3*d of* Edward *the First*; *The Statute of* Glocester, *made the* 6*th of* Edward *the First*; *And the Statute of* Westminster *the Second, made the* 13*th of* Edward *the First, were all confirm'd in this Kingdom, and all other Statutes which were of force in* England, *were referr'd to be Examin'd in the next Parliament; and so many as were then Allow'd and Publish'd, to stand likewise for Laws in this Kingdom. And in the* 10*th of* Henry *the Fourth, it was Enacted in this Kingdom of* Ireland, That the Statutes made in England should not be of force in this Kingdom, unless they were Allow'd and Publish'd in this Kingdom by Parliament. *And the like Statute was made again in the* 29*th of* Henry *the Sixth. These Statutes are not to be found in the* Rolls,

Statutes of *Merton. Marlebr. Westm. Glouc.*

*Vid. Lib. Rubr. Scaccar. Dubl.*

Rolls, nor any Parliament Roll of *that time*; *but he* (Sir Richard Bolton) *had ſeen the ſame Exemplifyd under the Great Seal, and the* Exemplification *remaineth in the Treaſury of the City of* Waterford. Thus far the Note. If we conſider the frequent Troubles and Diſtractions in *Ireland*, we ſhall not wonder that theſe, and many other Rolls and Records, have been loſt in this Kingdom: For from the third year of *Edward* the Second, which was *Anno* 1310, through the whole Reigns of *Edward* III. *Richard* II. *Henry* IV. and *Henry* V. and ſo to the Seventh year of *Henry* the Sixth, *Anno* 1428. which is about 118 years, there are not any *Parliament Rolls* to be found, (*a*) yet certain it is, that divers Parliaments were held in *Ireland* in thoſe times. (*b*) The ſame may be ſaid from *Henry* the Second's coming into *Ireland*, *Anno* 1172. to the third year of *Edward* the Second, *Anno* 1310. about 138 years.

(*a*) Annals of *Ireland*, at the End of *Camden's Britan.* Edit. 1637. page 196, 197, &c.

(*b*) *Ibid.* p. 160. *Pryn* againſt the 4th Inſtit. Chap. 76.

Perhaps it may be ſaid, That if there were ſuch Statutes of *Ireland* as the ſaid Acts of the 10th of

*Henry* the Fourth, and the 29th of *Henry* the Sixth; As they ſhew, that the Parliaments of *Ireland* did think that Engliſh Acts of Parliament could not bind *Ireland*; yet they ſhew likewiſe, that even in thoſe days the Parliaments of *England* did claim this Superiority; or elſe, to what purpoſe were the ſaid Acts made, unleſs in denial of that Claim?

All which I hope may be readily granted without any prejudice to the Right of the Iriſh Parliaments: There is nothing ſo common, as to have one Man claim another Mans Right: And if bare *Pretence* will give a *Title*, no Man is ſecure: And it will be yet worſe, if when another ſo *Pretends*, and I inſiſt on *my Right*, my Juſt Claim ſhall be turn'd to my Prejudice, and to the Diſparagement of my Title.

We know very well that many of the Judges of our Four Courts have been from time to time ſent us out of *England*; and ſome of them may eaſily be ſuppoſed to come

come over hither *Prepoſſeſs'd* with an Opinion of our Parliaments being ſubordinate to that of *England*. Or at leaſt, ſome of them may be *Scrupulous*, and deſirous of full *Security* in this Point; and on their Account, and for their Satisfaction, ſuch Acts as aforeſaid, may be deviſed, and Enacted in *Ireland*. But then, God forbid, that theſe Acts ſhould afterwards be laid hold of to a clear other intent than what they were framed for; and inſtead of Declaring and Securing our Rights, ſhould give an Handle of Conteſt, by ſhewing that our Rights have been queſtion'd of Antient Time.

In concluſion of all, If this *Superiority* of the Parliament of *England* have been *Doubted* a great while ago, ſo it has been as great a while ago Strenuouſly *Oppoſed*, and Abſolutely *Denied* by the Parliaments of *Ireland*. And by the way, I ſhall take Notice, That from whenceſoever this Antient *Pretence* of *Ireland*'s *Subordination* proceeded in thoſe days, it did not ariſe from the *Parliament* of *Eng-*

*land* it self: For we have not one single Instance of an English Act of Parliament *Expresly Claiming* this Right of Binding us: But we have several Instances of Irish Acts of Parliament, *Expresly Denying* this *Subordination*, as appears by what foregoes.

Afterwards by a Statute made in *Ireland* the 18th of *Hen.* VI. *Cap.* 1. All the Statutes made in *England* against the *Extortions* and *Oppressions* of *Purveyors*, are Enacted to be *holden and kept in all Points, and put in Execution in this Land of Ireland.*

And in the 32d year of *Henry* the Sixth, *Cap.* 1. by a Parliament in *Ireland*, 'tis Enacted, *That all the Statutes made against* Provisors *to the Court of* Rome, *as well in* England *as in* Ireland, *be had and kept in force.*

After this, in a Parliament at *Drogheda* the 8th of *Edward* IV. *cap.* 1. it was Ratify'd, That the *English* Statute against *Rape*, made the 6th of *Richard* the Second, should

should be of Force in *Ireland* from the 6th day of *March* last past: *And that from henceforth the said Act, and all other Statutes and Acts made by Authority of Parliament within the Realm of* England, *be Ratify'd and Confirm'd, and Adjudged by the Authority of this Parliament in their Force and Strength, from the said sixth day of March.* We shall hereafter have occasion of taking farther Notice of this Statute upon another Account.

Lastly, In a Parliament held at *Drogheda* the 10th of *Henry* the Seventh, *cap.* 22. it is Enacted, *That all Statutes* late (that is, as the (*a*) Learned in the Laws expound it, *before that time*) *made in* England, *concerning the Common and Publique Weal of the same, from henceforth be Deem'd effectual in Law, and be Accepted, Used and Executed within this Land of Ireland in all Points,* &c.

All English Statutes before the 10th of *Hen. VII.* in force in *Ireland.*

(*a*) *Cook's* 4th Instit. *Cap.* 76. P. 351.

(*b*) And in the 14th year of the same Kings Reign, in a Parliament held at *Tristle-Dermot*, it was Enacted, That all Acts of Parliament

(*b*) *Vid.* Irish Stat.

made in *England* for Punishing *Customers*, *Controulers*, and *Searchers*, for their Misdemeanors; or for Punishment of *Merchants* or *Factors*, be of Force here in *Ireland*, *Provided* they be first Proclaim'd at *Dublin*, *Drogheda*, and other Market-Towns.

Thus we see by what Steps and Degrees all the Statutes which were made in *England* from the time of *Magna Charta*, to the 10th of *Henry* the Seventh, which did concern the Common Publick Weal, were Receiv'd, Confirm'd, Allow'd, and Authoriz'd to be of Force in *Ireland*; all which was done by Assent of the *Lords Spiritual* and *Temporal*, and the *Commons* in the *Parliament of Ireland* Assembled, and *no Otherwise*.

English Statutes Declaratory of the Common Law in force in *Ireland*.

We shall next Enquire, Whether there are not other Acts of the English Parliament, both *before* and *since* the 10th of *Henry* the Seventh, which *were* and *are* of Force in *Ireland*, tho' not Allow'd of by Parliament in this Kingdom. And we shall find, That by the Opini-

on of our beſt Lawyers, *there are divers ſuch*; but then they are only ſuch as are *Declaratory* of the *Antient Common Law* of *England*, and not *introductive* of any *New Law*: For theſe become of Force by the firſt *General Eſtabliſhment* of the *Common Laws* of *England* in this Kingdom, under *Henry* the Second, King *John*, and *Henry* the Third; and need no particular Act of *Ireland* for their Sanction.

As to thoſe Engliſh Statutes ſince the 10th of *Henry* the Seventh, that are *Introductive* of a *New* Law, it was never made a Queſtion whether they ſhould Bind *Ireland*, without being Allow'd in Parliament here; till of very late years this Doubt began to be moved; and how it has been Carried on and Promoted, ſhall Appear more fully hereafter.

Engliſh Acts introductive of a New Law, not of force in *Ireland*.

I ſay, *Till of very late years*; for the *Antient* Precedents which we have to the contrary, are very numerous. Amongſt many, we ſhall mention the following Particulars.

In the 21th of *Henry* the 8th an Act was made in *England* making it Felony in a Servant that runneth away with his Masters or Mistresses Goods. This Act was not receiv'd in *Ireland* till it was Enacted by a Parliament held here in the 33d of *Henry* the 8th. c. 5. Sef. 1.

In the 21*th* of *Henry* VIII. c. 19. there was a Law made in *England*, That all Lords might Distrain on the Lands of them holden, and make their Avowry not naming the Tenant, but the Land. But this was not of force in *Ireland* till Enacted here in the 33*d* of *Henry* VIII. C. 1. Sef. 1.

An Act was made in *England*, *anno* 31. *Henry* VIII. That Joint-Tenents and Tenents in Common should be compelled to make Partition, as Coparceners were compellable at Common Law. But this Act was not Receiv'd in *Ireland* till Enacted here *An.* 33. *Henry* VIII. c. 10.

*Anno*

*Anno* 27. *Henry* VIII. c. 10. The Statute for Transferring Uſes into Poſſeſſion was made in *England*; but not admitted in *Ireland* till 10. *Car.* 1. Seſ. 2.

In like manner, the Engliſh Statute 33. *Henry* VIII. c. 1. directing how Lands and Tenements may be diſpos'd by Will, *&c.* was not of force in *Ireland* till 10. *Car.* 2. Seſ. 2.

The Act of Uniformity of Common Prayer and Adminiſtration of the Sacraments was made in *England* the 1ſt. of *Eliz.* c. 2. but was not eſtabliſh'd in *Ireland* till the 2*d.* of *Eliz.* c. 2. And ſo that of *England* 14. *Car.* 2. c. 14. was not receiv'd in *Ireland* till 17. & 18. *Car.* 2 c. 6.

The Statute againſt Wilful Perjury made in *England* 5. *Eliz.* c. 9. was not Enacted in *Ireland* till 28 *Eliz.* c. 1.

So the Engliſh Act againſt Witchcraft and Sorcery made 5 *Eliz.* c. 16.

And

And another Act againſt Forgery 5 *Eliz.* c. 14. were neither of them in force in *Ireland* till the 28*th* of Her Reign, Cap. 3 and 4.

The Engliſh Statutes againſt Pirates was made the 28th of *Hen.* 8. c. 15. but not in *Ireland* till the 12th of King *James*, c. 2.

In *England* an Act was made the 27th of *Eliz.* c. 14. againſt Fraudulent Conveyances; but it was not in force in *Ireland* till Enacted here the 10th of *Charles*, c. 3. Seſ. 2.

In the 15th year of King *Charles* the 1ſt, in a Parliament held at *Dubſin* there were Six Engliſh Statutes made Laws of this Kingdom, with ſuch Alterations as beſt fitted them to the State thereof, *viz.*

21 *Jac.* c. 14. For pleading the General Iſſue in Intruſions, brought by the King, by Chap. 1. of the Iriſh Statutes.

31 *Eliz.* c. 2. For Abridging of Proclamations on Fines, by Chap. 2.

2 and

2 and 3 *Edw.* 6. c. 8. Concerning Offices before the Escheator, by Chap. 4.

31 *Eliz.* c. 1. Discontinuance of Writs of Error in the Exchequer Chamber, by Chap. 5.

8 *Eliz.* c. 4. and 18 *Eliz.* c. 7. concerning Clergy, by Chap. 7.

24 *Hen.* 8. c. 5. Concerning Killing a Robber, by Chap. 9.

There are Six English Statutes likewise passed in the time of King *Charles* the 2d. upon and soon after the Restoration, some of which were not passed into Laws in *Ireland* till a year, two or three, afterwards: As will appear by consulting the Statute Books. (a)

(a) Irish Stat.
13 C. 2. c. 2.
13 C. 2. c. 3.
14 & 15 C. 2. c. 1.
14 & 15 C. 2. c. 19.
17 & 18 C. 2. c. 3.
17. & 18 C. 2. c. 11.
English Stat.
12 C. 2. c. 12.
12 C. 2. c. 3.
12 C. 2. c. 14.
12 C. 2. c. 24.
12 C. 2. c. 33.
16 & 17 C. 2. c. 5.

And in the First year of *William* and *Mary*, Sess. 2. c. 9. an Act passed in *England* declaring all *Attainders and other Acts made in the late pretended Parliament under King* James *at* Dublin *void*. But was not Enacted here in *Ireland* till the 7th year of K. *William* c. 3. And this was thought requisite to be done upon mature consideration thereon before the

the King and Council of *England*,* notwithstanding that the English Act does *particularly name Ireland*, and was wholly design'd for, and relates thereto.

*For we had two several Acts transmitted to us at different times, to this very purpose. One we rejected in the Lord *Sydneys* Government, t'other we pass'd under the Lord *Capell*.

The like may we find in several other Statutes of *England* passed since his present Majesties Accession to the Throne, which have afterwards been passed here in *Ireland*, with such Alterations as make them practicable and agreeable to this Kingdom. Such as are amongst others, the Act for *Disarming Papists*. The Act of *Recognition*. The Act for taking away *Clergie* from some Offenders. The Act for taking *Special Bail* in the Country, &c. The Act against *Clandestine Mortgages*. The Act against *Cursing and Swearing*.

These, with many more, are to to be found in our Statute Books in the several Reigns of *Henry* the 8th. *Edward* the 6th. Queen *Elizabeth*, King *James*, King *Charles* the 1st and 2d. and King *William*. But it is not to be found in any Records

Records in *Ireland*, that ever any Act of Parliament introductive of a new Law made in *England* ſince the time of King *John*, was by the judgment of any Court received for Law, or put in Execution in the Realm of *Ireland* before the ſame was Confirmed and Aſſented to by Parliament in *Ireland*.

And thus I preſume we have pretty clearly made out our *Fourth Enquiry* forementioned: and ſhewn plainly *the ſeveral ſteps by which the Engliſh form of Government, and the* Engliſh Statute Laws *were received in this Kingdom*; and that this was wholly by the *Peoples conſent in Parliament*, to which we have had a very *antient Right*, and as full a Right as our next Neighbours can pretend to or challenge.

I ſhall now conſider the Objections and Difficulties that are moved on this Head drawn from Precedents, and Paſſages in our Law-Books that may ſeem to prove the contrary. Objections Anſwer'd.

First

Objection from the Stat. of Rape.

First 'tis urg'd, That in the Iriſh *Act concerning Rape* paſſed anno 8 *Edward* 4, c. 1. 'tis expreſſed, That a Doubt was conceiv'd whether the Engliſh Statute of the 6th of *Richard* the 2d. c. 6. ought to be of force in *Ireland* without a Confirmation thereof in the Parliament of *Ireland*. Which ſhews (as ſome alledg) that even in thoſe days it was held by ſome, That an Act of of Parliament in *England* might bind *Ireland* before it be conſented to in Parliament here.

But I concieve this Gloſs is rais'd meerly for want of Expreſſing the Reaſon of the ſaid Doubt in the Iriſh Statute of the 8th of *Edward* the 4th. c. 1. which we may reaſonably judge was this. By the Statute of *Weſtminſter* the 2d. c. 34. a Woman that eloped from her Husband and lived with the Adulterer, or a Wife that being firſt Raviſh'd did afterwards conſent, and lived with the Raviſher, ſhe ſhould looſe her Dower. This Statute of *Weſtminſter* the 2d, was made of force in *Ireland* by an Act paſſed here

the

the 13th of *Edward* the 2d, as we have ſeen before, pag. 68, 69. Afterwards by the Engliſh Statute of the 6th of *Rich.* the 2d. c. 6. there was a farther addition made to the ſaid Statute of *Weſtminſter* the 2d. to this effect, That a Maiden or Wife being Raviſhed, and afterwards conſenting to the Raviſhers, as well the Raviſher as ſhe that was Raviſhed ſhall be diſabled to claim all Inheritance or Dower after the death of her Husband or Anceſtor.

On this account the Doubt was here raiſed in *Ireland* in the 8th of *Edward* the 4th. c. 1. Whether this latter Engliſh Statute of the 6th of *Richard* the 2d. c. 6. were not in force in *Ireland* by virtue of the Iriſh Statute of the 13th of *Edward* the 2d. which confirmed the Statute of *Weſtminſter* the 2d. c. 34. And for ſetling this Doubt the ſaid Statute of the 8th of *Edward* the 4th c. 1. was paſſed in *Ireland*, and we find very good reaſon for the ſaid Doubt. For the Engliſh Statute of the 6th of *Richard* the 2d. c. 6. contained but a ſmall addition

to

to the Statute of *Weſtminſter* the 2d c. 34. and we ſee that even this addition it ſelf was judged not to be of force in *Ireland* till Enacted here. For the ſaid Iriſh Statute of the 8th of *Edward* the 4th. c. 1. makes the ſaid Statute of the 6th of *Rich.* 2d. c. 6. of Force in *Ireland* only from the 6th of *March*, then laſt paſt.

'Tis urg'd ſecondly, That tho' perhaps ſuch Acts of Parliament in *England* which do not *Name Ireland*, ſhall not be conſtrued to Bind *Ireland*, yet all ſuch Engliſh Statutes as *mention Ireland*, either by the *General Words* of *all his Majeſty's Dominions*, or by *particularly Naming* of *Ireland*, are and ſhall be of Force in this Kingdom.

This being a Doctrine firſt broach'd Directly (as I conceive) by *Will. Huſſey*, Lord Chief Juſtice of the Kings Bench in *England*, in the firſt year of *Henry* the Seventh, and of late Revived by the Lord Chief Juſtice *Cook*, and ſtrongly urged, and much rely'd upon in theſe latter Days; I ſhall take the Liberty of Enlarging thereon, tho'

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I venture thereby to ſwell this Pamphlet to a ſize greater than I deſire or deſign'd.

Object. English Statutes comprehending *Ireland* by general Words.

First therefore, As to ſuch Engliſh Statutes as ſeem to comprehend *Ireland*, and to Bind it, under the *General Words of all his Majeſty's Dominions* or *Subjects*, whatever has been the Opinion of Private and Particular Lawyers in this Point, I am ſure the Opinions of the Kings of *England*, and their Privy Council, have been otherwiſe: 'Tis well known ſince *Poyning*'s Act in *Ireland*, the 10th of *Henry* the Seventh, no Act can paſs in our Parliament here, till it be firſt Aſſented to by the King and Privy Council of *England*, and Tranſmitted hither under the Broad Seal of *England*: Now the King and his Privy Council there, have been ſo far from ſurmiſing that an Act of Parliament of *England*, mentioning only in General *All the Kings Dominions*, or *Subjects*, ſhould bind *Ireland*, that they have clearly ſhewn the contrary, by frequently Tranſmitting to *Ireland*, to be paſs'd into Laws here, Engliſh Sta-

tutes, wherein the *General Words of all the Kings Dominions* or *Subjects* were contain'd; which would have been to no purpose, but meerly *Actum Agere*, had *Ireland* been Bound *before* by those English Statutes.

Of this I shall give the following Examples, amongst many others.

Act against Appeals to *Rome*.

The Act of Parliament in *England* against *Appeals to Rome*, 24 *Hen.* 8. c. 12. by expres words extends to all his Majesties Dominions, yet the same was not in force, nor receiv'd in *Ireland*, till it was Enacted by Parliament there, the 28th of *Hen.* 8. c. 6.

Acts of First Fruits and Faculties.

In like manner the Statutes made in *England* concerning *First Fruits*, 26 *Hen.* 8. c. 3. and the Act of *Faculties*, (a) 25 *Hen.* 8. c. 21. though each of them by expres words comprize *All his Majesties Subjects and Dominions*, were not receiv'd as Laws in *Ireland*, till the former was Enacted there, 28 *H.* 8. c. 4. and the latter the 28 *Hen.* 8. c. 19. and so the

(a) Title in the English Statutes is, *No Imposition shall be paid to the Bishop of Rome.*

the Statute Reſtoring to the Crown all Juriſdiction Eccleſiaſtical made in *England*, *Anno* 1 *Eliz.* c. 1. and therein giving Power to Erect an Eccleſiaſtical *High-Commiſſion-Court* in *England* and *Ireland*, yet was not of Force in *Ireland* till Enacted there, *Anno* 2 *Eliz.* c. 1. And tho' the ſaid Engliſh Act, in relation to Erecting ſuch an High-Commiſſion Court, was Repeal'd 17 *Car.* 1. c. 11. and the Repeal confirm'd the 13 *Car.* 2. c. 12 And the late Bill of Rights, 1 *W.* and *M. Seſ.* 2. c. 2. in *England*, has damn'd all ſuch Courts. Yet the Act in *Ireland* 2 *Eliz.* c. 1. remains ſtill in force here; and ſo it was lately declar'd here by the Lord High-Chancellour *Porter*, Lord Chief Juſtice *Reynel*, Lord Chief Baron *Hely*, Mr. Juſtice *Cox*, Mr. Juſtice *Jeffreyſon*, in the Caſe of Dr. *Thomas Hacket*, late Biſhop of *Down*, who was depriv'd of the ſaid Biſhoprick by ſuch a Commiſſion, for great Enormities; the Commiſſioners being Dr. *Dopping* late Biſhop of *Meath*, Dr. *King*, the preſent Biſhop of *London-Derry*, and Dr. *Wiſeman*, late Biſhop of *Dromore*.

High-Commiſſion-Court.

By the same Reason *Scotland* may be bound.

And truly I see no more Reason for Binding *Ireland* by the English Laws under the *General Words of all his Majesties Dominions or Subjects*, than there is for Binding *Scotland* by the same; for *Scotland* is as much his *Dominion*, and *Scotsmen* as much his *Subjects* as *Ireland* and *Irish-men*: If it be said, That *Scotland* is an Antient *Separate* and *Distinct* Kingdom from *England*; I say, So is *Ireland*: The Difference is, *Scotland* continued *separate* from the Kings of *England* till of *late years*, and *Ireland* continued *separate* from *England* but a very *little while* in the Person of King *John*, before the Death of his Father, and of his Brother *Richard* the First, without issue. But then 'tis to be considered, that there was a *Possibility*, or even a *Probability*, that *Ireland* might have continued *separate* from the Crown of *England*, even to this very day, if *Richard* the First had left behind him a Numerous Progeny.

Second-

Secondly, As to ſuch Engliſh Statutes as particularly *Name Ireland*, and are therefore ſaid to be of Force in this Kingdom, tho' never Enacted here; I ſhall conſider only the more *Antient Precedents* that are offered in Confirmation of this Doctrine: For as to thoſe of *later Date*, 'tis theſe we complain of, as bearing hard on the *Liberties* of this Country, and the *Rights* of our Parliaments, and therefore *theſe* ought not to be produced as Arguments againſt us. I preſume, if I can ſhew, that the *Antient* Precedents that are produced, *do not conclude* againſt us; it will follow that the *Modern* Inſtances given, *ought not to conclude* againſt us; that is to ſay plainly, Theſe *ought* not to have been made as they are, as wanting Foundation both from Authority and Reaſon.

Engliſh Statutes naming *Ireland*.

The *Antient* Precedents of Engliſh Statutes, particularly *Naming Ireland*, and ſaid to be made in *England* with a Deſign of Binding *Ireland*, are chiefly theſe three:

1. *Statutum Hiberniæ*, 14 *H.* 3.

2. *Ordinatio pro Statu Hiberniæ*, 17 Edw. 1.

3. And the Act that all *Staple* Commodities paſſing out of *England* or *Ireland*, ſhall be carried to *Callis*, as long as the *Staple* is at *Callis*, 2 *Hen.* 6. c. 4. on which *Huſſey* delivered his Opinion, as we ſhall ſee more fully hereafter.

Theſe Statutes, eſpecially the two firſt, being made for *Ireland*, as their Titles import, have given occaſion to think, that the Parliament of *England* have a *Right* to make Laws for *Ireland*, without the *Conſent* of their Choſen *Repreſentatives*. But if we Enquire farther into this matter, we ſhall find this Concluſion not fairly Deduced.

Firſt, The *Statutum Hiberniæ*, 14 *Hen.* 3. as 'tis to be found in the Collection of Engliſh Statutes, is plainly thus: The Judges in *Ireland* concei-

conceiving a Doubt concerning Inheritances devolved to Sisters or Coheirs, *viz.* Whether the younger Sisters ought to hold of the Eldest Sister, and do Homage unto her for their Portions, or of the Chief Lord, and do Homage unto him; therefore *Girald Fitz Maurice*, the then Lord Justice of *Ireland*, dispatcht four Knights to the King in *England*, to bring a Certificate from thence of the *Practice* there used, and what was the *Common-Law* of *England* in that *Case*. Whereupon *Hen.* 3 in this his Certificate or Rescript, which is called *Statutum Hiberniæ*, meerly informs the Justice what the *Law* and *Custom* was in *England*, *viz.* That the Sisters ought to hold of the Chief Lord, and not of the Eldest Sister. And the close of it commands, that *the foresaid Customs that be used within our Realm of* England *in this Case, be Proclaimed throughout our Dominion of* Ireland, *and be there observ'd. Teste meipso apud* Westminst. 9. Feb. *An. Reg.* 14.

From whence 'tis manifest, that this *Statutum Hiberniæ* was no

more than a Certificate of what the *common Law of England* was in that Case, which *Ireland* by the *Original Compact* was to be governed by. And shews no more, that therefore the Parliament of *England* may bind *Ireland*, than it would have proved, that the Common Wealth of *Rome* was subject to *Greece*, if, after *Rome* had received the Law of the *Twelve Tables*, they had sent to *Greece* to know what the Law was, in some Special Case.

*Ordinatio pro Statu Hiberniæ.*

The Statute call'd *Ordinatio pro Statu Hiberniæ*, made at *Notingham* the 17th of *Edward* the First, and to be found in *Pultons* Collection *pag.* 76. *Edit. Lond.* 1670. was certainly never Received, or of Force, in *Ireland*. This is Manifest from the very first Article of that Ordnance, which Prohibits the *Justice of Ireland or others the Kings Officers, there to Purchase Land in that Kingdom, or within their respective Baliwicks without the Kings Licence, on pain of Forfeitures.* But that this has ever been Otherwise, and that the Lords Justices, and other Offi-

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cers here have Purchas'd Lands in *Ireland*, at their own Will and Pleasure, needs no Proof to those who have the least knowledge of this Country. Nor does it appear by any Inquisition, Office, or other Record, that any one ever Forfeited on that Account.

Moreover this *Ordinatio pro Statu Hiberniæ*, is really in it self *No Act of Parliament*, but meerly an Ordinance of the *King* and his *Privy Council* in *England*; which appears as well from the Preamble to the said Ordinance, as from this Observation likewise, That King *Edward* the First held no Parliament in the 17th year of his Reign: Or if this were a Parliament, this *Ordinatio pro Statu Hiberniæ*, is the *only Act* thereof that is Extant: But 'tis very improbable, that only this *single Ordinance* should Appear, if any such Parliament were call'd together.

Thirdly, As to the *Staple-Act*, 2 *Hen.*6. c.4. which expresly names *Ireland*, and *Hussey*'s Opinion thereon. The Case, as we find it in the Year-

Staple-Act.

Merchants of *Waterford's* Case.

Year-Books of *Mich.* 2 *Rich.* 3. fol. 11. and *Mich.* 1 *Hen.* 7. fol. 3. is in short thus: The Merchants of *Waterford* having Ship'd off some Wooll, and consign'd it to *Sluice* in *Flanders*, the Ship by stress of Weather was put in at *Callis*, where Sir *Thomas Thwaits*, Treasurer of *Callis*, seized the said Wooll as forfeited, half to himself, and half to the King, by the said Statute; hereupon a Suit was commenced between the said Merchants and the said Treasurer, which was brought before all the Judges of *England* into the *Exchequer* Chamber: The Merchants pleaded the King's *License* to the Citizens of *Waterford* and their Successors, for carrying Wooll where they pleased; and the Questions before the Judges were two, Viz. *Whether this Staple-Act Binds Ireland*; And Secondly, *Whether the King could grant his* License *contrary to the Statute, and especially where the Statute gives half the Forfeiture to the Discoverer.*

The first Point only relates to our present purpose; and herein we find the foresaid Year-Book of 2 *Rich.*

*Rich.*3. fol.12. to Report it thus: *Et ibi* (in the Exchequer Chamber) *quoad Primam Queſtionem Dicebant quod Terr. Hibern. inter ſe habent Parliament. & omnimodo Cur. prout in Angl. & per Idem Parliamentum faciunt Leges & Mutant Leges & non Obligantur per Statuta in Anglia, quia non hic habent Milites Parliamenti* (and is not that an unanſwerable Reaſon?) *ſed hoc intelligitur de terris & rebus in terris illis tantum efficiendo; ſed Perſonæ eorum ſunt Subject. Regis & tanquam Subjecti erunt Obligati ad aliquam rem extra Terram illam faciend. contra Statut. ſicut habitantes in Caleſia, Gaſcoignie, Guien, &c. dum fuere Subjecti; & Obedientes erunt ſub Admiral. Angl. de re fact. ſuper Altum Mare; & ſimilit. Brev. de Errore de Judicio reddit. in Hibern. in Banco Reg. hic in Angl.*

I have *verbatim* tranſcribed this Paſſage out of the foreſaid Year-Book, that I might be ſure to omit nothing that may give the Objection its full weight. And all that I can anſwer to it, is this:

1. That

1. That when the foresaid Case came a second time under the Consideration of the Judges in the *Exchequer* Chamber in *Mich.* 1 *Hen.* 7. fol. 3. we find it Reported thus: *Hussey the Chief Justice said, That the Statutes made in* England *shall bind those of* Ireland, *which was not much gain-said by the other Judges, notwithstanding that some of them were of* a contrary Opinion *the last Term in his Absence.* How the Presence and Opinion of the Chief Justice came to influence them now, I leave the Reader to judge.

2. That *Brook* in Abridging this Case of the first of *Hen.* 7. fol. 3. Title *Parliament*, Sec. 90. adds, *Tamen Nota, That Ireland is a Kingdom by it self, and hath Parliaments of its own*; intimating thereby, That therefore *Hussey*'s *Opinion* herein was *Unreasonable*.

3. That 'tis manifest, if *Hussey* mean by his words, That *All* Acts of Parliament in *England* shall bind *Ireland*, it is directly contrary to the

the Judges Opinion in the ſecond of *Richard* the Third, before recited; for *within* the Land of *Ireland*, they are all poſitive, That the Authority of the Parliament of *England* will not Affect us. They ſeem at the utmoſt reach to extend the Juriſdiction of the Engliſh Parliament over the Subjects of *Ireland*, *only* in relation to their Actions beyond Seas, out of the Realm of *Ireland*, as they are the *King of England's Subjects*; but *even This* will Appear Unreaſonable, when we conſider, that by the ſame Argumentation, *Scotland* it ſelf may be bound by Engliſh Laws, in relation to their Foreign Trade, as they are the *King of Englands Subjects*. The Queſtion is, Whether *England* and *Ireland* be two Diſtinct Kingdoms, and whether they have each their Reſpective Parliaments; neither of which will be deny'd by any Man: And if ſo, there can be no Subordination on either ſide, each is compleat in its own Juriſdiction, and ought not to interfere with t'other in any thing. If *being the King of England's Subjects*, be a Reaſon why

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we ought to ſubmit to Laws, (in relation to our Trade abroad, in places where the Parliament of *England* has no Juriſdiction) *which have not receiv'd our Aſſent*; the People of *England* will conſider whether they alſo are not the King's Subjects, and may therefore (by this way of Reaſoning) be bound by Laws which the King may Aſſign them without their Aſſent, in relation to their Actions *Abroad*, or Foreign Trade: Or whether they had not been Subjects to the *King of France*, had our Kings continu'd their Poſſeſſion of that Country, and there kept the Seat of the Monarchy; and then, had *France* been ſtronger than *England*, it might ſeem that the Subjects of theſe Kingdoms might have been bound by Laws made at *Paris*, without their own Conſent. But let this Doctrine never be mention'd amongſt the *Free-born* Subjects of theſe Nations.

Thus I have done with the *Three Principal* Inſtances that are uſually brought againſt us, on the Streſs that is laid on Engliſh Acts of Parlia-

Parliament, particularly Naming *Ireland*.

There have been other Statutes or Ordinances made in *England* for *Ireland*, which may reasonably be of force here, because they were made and Assented to by our own Representatives. Thus we find in the *White Book* of the Exchequer in *Dublin*, in the 9th year of *Edward* the First, a Writ sent to his Chancellour of *Ireland*, wherein he mentions *Quædam Statuta per nos de Assensu Prelatorum Comitum Baronum & Communitates Regni nostri Hiberniæ, nuper apud Lincoln & quædam alia Statuta postmodum apud Eborum facta.* These we may suppose were either Statutes made at the Request of the States of *Ireland*, to *Explain* to them the *Common Law of England*; or if they were introductive of *New Laws*, yet they might well be of force in *Ireland*, being Enacted by the Assent of our own Representatives, The Lords Spiritual and Temporal, and Commons of *Ireland*; as the Words afore-mention'd do shew: And indeed, these are Instances so far from

Members from *Ireland* in the Parliament of *England*.

from making *against* our Claim, that I think nothing can be more plainly *for* us; for it manifestly shews, that the King and Parliament of *England* would not Enact Laws to Bind *Ireland*, without the *Concurrence* of the Representatives of this Kingdom.

Formerly, When *Ireland* was but thinly Peopled, and the English Laws not fully currant in all parts of the Kingdom, 'tis probable that then they could not frequently Assemble with conveniency or safety to make Laws in their own Parliaments at home; and therefore during the Heats of Rebellions, or Confusion of the Times, they were forced to Enact Laws in *England*. But then this was always by their proper *Representatives*: For we find that in the Reign of *Edward* the Third, (and by what foregoes, 'tis plain 'twas so in *Edward* the First's Time) Knights of the Shire, Citizens, and Burgesses, were Elected in the Shires, Cities and Burroughs of *Ireland*, to serve in Parliament in *England*, and have so served accordingly. For amongst the

the Records of the *Tower* of *London*, *Rot. Claus.* 50. *Edw.* 3. *Part.* 2. Membr. 23. We find a Writ from the King at *Weſtminſter*, directed to *James Butler*, Lord Juſtice of *Ireland*, and to *R.* Archbiſhop of *Dublin*, his Chancellour, requiring them to iſſue Writs under the Great Seal of *Ireland*, to the ſeveral Counties, Cities and Burroughs, for ſatisfying the Expences of the Men of that Land, *who laſt came over to ſerve in Parliament in England.* And in another Roll the 50th of *Edw.* III. Membr. 19. On Complaint to the King by *John Draper*, who was Choſen Burgeſs of *Cork* by Writ, and ſerved in the Parliament of *England*, and yet was deny'd his Expences by ſome of the Citizens, Care was taken to re-imburſe him.

If from theſe laſt mention'd Records, it be concluded that the Parliament of *England* may *Bind Ireland*; it muſt alſo be Allow'd that the People of *Ireland* ought to have their *Repreſentatives* in the Parliament of *England*. And this, I believe we ſhould be willing enough

to embrace; but this is an Happiness we can hardly hope for.

This sending of Representatives out of *Ireland* to the Parliament in *England*, on some occasions, was found in process of time to be very Troublesome and Inconvenient; and this, we may presume, was the Reason, that afterwards, when Times were more settled, we fell again into our old Track, and regular course of Parliaments in our own Country; and hereupon the Laws afore-noted, pag. 64. were Enacted, Establishing that *no Law made in the Parliament of England should be of force in Ireland, till it was Allowed and Publish'd in Parliament here.*

Modern Acts of the Parliament of *England*, naming *Ireland.*

I have said before, pag. 85. that I would only consider the *more Ancient Precedents* that are offered to prove, That Acts of *England particularly Naming Ireland*, should bind us in this Kingdom; and indeed it were sufficient to stop here, for the Reason above alledged. However I shall venture to come down lower, and to enquire into the *Modern*

Precedents of English Acts of Parliament alledged againſt us: But ſtill with this Obſervation, That 'tis theſe we *Complain againſt* as Innovations, and therefore they *ought* not to be brought in Argument againſt us.

I do therefore again aſſert, that before the Year 1641. there was no Statute made in *England* introductory of a *New Law* that interfered with the Right which the People of *Ireland* have to make Laws for themſelves, except only thoſe which we have before mentioned, and which we have diſcuſs'd at large, and ſubmit to the Readers Judgment.

But in the Year 1641. and afterwards in *Cromwel*'s time, and ſince that, in King *Charles* II. and again very lately in King *William*'s Reign, ſome Laws have been made in *England* to be of *Force* in *Ireland*. But how this came to paſs, we ſhall now Enquire.

In the 17th Year of K. *Charles* I. which was in the Year 1642. there were

Acts in favour of Adventurers in 1641.

were three or four Acts of Parliament made in *England* for incouraging *Adventurers* to raiſe Money for the ſpeedy ſuppreſſion of the Horrid Rebellion which broke out in *Ireland* the 23*d* of *October* 1641. The Titles of theſe Acts we have in *Pulton's Collection of Statutes*: But with this Remark, *That they are made of no Force by the Acts of Settlement and Explanation* paſſed in King *Charles* II's. time in the Kingdom of *Ireland*. So that in theſe we are ſo *far* from finding Precedents for *England*'s Parliament binding *Ireland*, that they plainly ſhew, that the Parliament of *Ireland* may *Repeal* an Act paſſed in *England*, in relation to the Affairs of *Ireland*. For 'tis very well known, that Perſons who were to have Intereſts and Titles in *Ireland* by virtue of thoſe Acts paſſed in *England*, are out off by the *Acts of Settlement and Explanation*. And indeed there is all the Reaſon in the World that it ſhould be ſo, and that Acts made in a Kingdom by the Legal Repreſentatives of the People, ſhould take place of thoſe made in another Kingdom. But however, it will be

ſaid,

ſaid, that by thoſe Acts 'tis manifeſt that *England* did preſume they had ſuch a *Right* to paſs Acts binding *Ireland*, or elſe they had ne'er done it. To which I anſwer, That conſidering the condition *Ireland* was in at that time, *viz.* under an horrid *Inteſtine Rebellion*, flaming in every corner of the Kingdom; 'twas impoſſible to have a Parliament of our own; yet it was abſolutely neceſſary that ſomething ſhould be done towards ſuppreſſing the Violences then raging amongſt us: And the only means could then be practiſed, was for the Parliament of *England* to interpoſe, and do ſomething for our Relief and Safety; theſe were the beſt Aſſurances could be had at that juncture: But when the Storm was over, and the Kingdom quieted, we ſee new Meaſures were taken in a Legal Parliament of our own.

As to what was done for *Ireland* in the Parliament of *England* in *Cromwel*'s time, beſides the Confuſion and Irregularity of all Proceeding in thoſe days, which hinders any of them to be brought in, Acts in *Cromwels* time.

to Precedent in theſe times; We ſhall find alſo that then there were *Repreſentatives* ſent out of this Kingdom, who ſate in the Parliament of *England*, which then was *only* the *Houſe of Commons*. We cannot therefore argue from hence, that *England* may bind us; for we ſee they allow'd us *Repreſentatives*, without which, they rightly concluded, they could not make Laws *Obligatory* to us.

I come now to King *Charles* the 2ds time: And in it we ſhall find the following Engliſh Statutes made, in which the Kingdom of *Ireland* is concerned.

Cattle Act. The firſt is an *Act againſt Importing Cattle from* Ireland *or other Parts beyond Seas*. It was only temporary by 18 *Ch.* 2. c. 2. but made perpetual 20 *Ch.* 2. c. 7. and 32 *Ch.* 2. c. 2. This Act, however prejudicial to the Trade that was then carried on between *Ireland* and *England*, does not *properly Bind us*, more than it does any other Country of the World. When any thing is Imported, and Landed in *England*,

*England*, it becomes immediately subject to the Laws thereof, so that herein we cannot be said *properly* to be *bound*.

Secondly, The Acts against Planting *Tobacco* in *England* and *Ireland*, 12 *Ch.* 2. c. 34. and 15 *Ch.* 2. c. 7. and 22 and 23 *Ch.* 2. c. 26, *&c.* do *positively Bind Ireland*. But there has never been an Occasion of Executing it here; for I have not heard that a Rood of Tobacco was ever Planted in this Kingdom. But however that takes not off the *Obligation* of the Law: 'Tis only want of our Consent, that I urge against that. I see no more Reason for sending a Force to Trample down an Acre of *Tobacco* in *Ireland* by these Statutes, than there would be for Cutting down the Woods of *Shelela*, were there an Act made in *England* against our Planting or Having *Timber*. Tobacco Act.

Thirdly, The *Act for Encouraging Shipping and Navigation, by expreſs name* Mentions and Binds *Ireland*; and by the last Clause in the Act, Obliges all Ships belonging thereto Navigation Act.

importing any Goods from our Foreign Plantations, to touch first at *England*.

Note, Exporting Woolls from *Ireland*, is made penal by the Irish Stat. 13 *Hen.* 8. c. 2. 28 *Hen.* 8. c. 17. But both these Statutes are obsolete: The like may we observe of the 11 Eliz. c. 10. & 13 El. c. 4.

Fourthly, The Acts Prohibiting the Exportation of Woolls from *Ireland*, to any Country except to *England*, do likewise *strongly Bind us*, and by the 12 *Car.* 2. c. 32. it was made highly penal on us, and by the 14th of *Car.* 2. c. 18. 'tis made Felony.

To these three last Acts, I must confess, I have nothing to urge, to take off their Efficacy; *Name* us they do most certainly, and *Bind* us so, as we do not transgress them. But how *Rightfully* they do this, is the matter in Question. This I am sure of, that before these Acts in King *Charles* the Second's Time, (the Eldest of which is not over Thirty-Seven years) *there is not one positive full Precedent to be met with in all the Statute-Book, of an English Act Binding the Kingdom of Ireland.* And on this Account we may venture to assert, That these are at least *Innovations* on us, as not being warranted by any former Precedents. And

And ſhall *Proceedings only of Thirty-Seven Years ſtanding*, be urg'd againſt a Nation, to Deprive them of the *Rights* and *Liberties* which they Enjoy'd for Five Hundred Years before, and which were Invaded without and againſt their *Conſent*, and from that day to this have been conſtantly complain'd of? Let any Engliſh Heart that ſtands ſo *Juſtly* in Vindication of his own *Rights* and *Liberties*, anſwer this Queſtion, and I have done.

I am now arriv'd at our Preſent Days, under the Happy Government of His Majeſty King *WILLIAM* the Third; and I am ſorry to reflect, That ſince the late Revolution in theſe Kingdoms, when the Subjects of *England* have more ſtrenuouſly than ever Aſſerted their own *Rights*, and the *Liberty* of Parliaments, it has pleaſed them to bear harder on their Poor Neighbours, than has ever yet been done in many Ages foregoing. I am ſure what was then done by that Wiſe and Juſt Body of Sena-

*Engliſh Acts Binding Ireland ſince King William's Reign.*

tors,

tors, was perfectly out of Good Will and Kindness to us, under those Miseries which our Afflicted Country of *Ireland* then suffered. But I fear some Men have since that, made use of what was then done, to other Purposes than at first intended. Let us now see what that was, and consider the Circumstances under which it was done.

In the year 1689. when most of the Protestant Nobility, Gentry, and Clergy of *Ireland*, were driven out of that Kingdom by the Insolencies and Barbarities of the *Irish Papists*, who were then in Arms throughout the Kingdom, and in all Places of Authority under King *James*, newly Return'd to them out of *France*; the only Refuge we had to fly to was in *England*, where Multitudes continued for many Months, destitute of all manner of Relief, but such as the Charity of *England* afforded, which indeed was very *Munificent, and never to be forgotten.*

The

The Protestant Clergy of *Ireland* being thus Banish'd from their Benefices, many of them Accepted such small Ecclesiastical Promotions in *England*, as the Benevolence of well dispos'd Persons presented them with. But this being directly contrary to a Statute in this Kingdom, in the 17 and 18 of *Charles* the Second, *Cap.*10. Intituled, *An Act for Disabling of Spiritual Persons from holding Benefices or other Ecclesiastical Dignities in England or Wales, and in Ireland at the same time.* The Protestant Irish Clergy thought they could not be too secure in avoiding the Penalty of the last mention'd Act, and therefore Apply'd themselves to the Parliament of *England*, and obtain'd an Act in the first year of King *William* and Queen *Mary*, c. 29. Intituled, *An Act for the Relief of the Protestant Irish Clergy.* And this was the first Attempt that was made for *Binding Ireland* by an Act in *England*, since his Majesty's Happy Accession to the Throne of these Kingdoms.

Act for the Protestant Irish Clergy.

After-

Act against Commerce with *France*.

Afterwards in the same year, and same Session, Chap. 34. there pass'd an Act in *England*, *Prohibiting all Trade and Commerce with France*, both from *England* and *Ireland*. This also binds *Ireland*, but was during the Heat of the War in that Kingdom, when 'twas impossible to have a regular Parliament therein, all being in the hands of the Irish Papists. Neither do we complain of it, as hindring us from corresponding with the King's Enemies, for 'tis the Duty of all Good Subjects to abstain from that. But as *Scotland*, tho' the King's Subjects, Claims an Exemption from all Laws but what they Assent to in Parliament; so we think this our Right also.

When the Banish'd Laity of *Ireland* observ'd the Clergy thus careful to secure their Properties, and provide for the worst as well as they could in that Juncture, when no other means could be taken by a Regular Parliament in *Ireland*; they thought it likewise advisable for them to do something in relation to their Concerns. And accordingly

cordingly they obtain'd the *Act for the better Security and Relief, of their Majeſties Proteſtant Subjects of Ireland*, 1 W. *and* M. *Seſ.* 2. *c.* 9. Wherein King *James*'s *Iriſh Parliament* at *Dublin*, and all *Acts* and *Attainders* done by them, are declared *void*. 'Tis likewiſe thereby Enacted, that no Proteſtant ſhall ſuffer any Prejudice in his Eſtate or Office, by reaſon of his abſence out of *Ireland*, ſince *December* 25. 1685. and that there ſhould be a Remittal of the Kings Quit-Rent, from 25 *December* 1688. to the end of the War. Thus the Laity thought themſelves ſecure.

Act for Security of the Proteſtants of *Ireland*.

And we cannot wonder that during the Heat of a Bloody War in this Kingdom, when it was impoſſible to Secure our Eſtates and Properties by a Regular Parliament of our own; we ſhould have recourſe to this Means, as the only which then could be had. We concluded with our ſelves, that when we had obtained theſe Acts from the Parliament in *England*, we had gon a great way in ſecuring the like Acts to be paſſed in a regular Parliament in *Ireland*, whenever it ſhould

should please God to re-establish us in our own Country: For we well know our own Constitution under *Poynings Law*, That no Act could Pass in the Parliament of *Ireland* till approved of by the King and Privy Council of *England*. And we knew likewise, That all the Lords and others of his Majesties Privy Council in *England* are Members of the Lords or Commons House of Parliament there. And that by obtaining their Assent to Acts of Parliament in Favour of the Irish Protestants, they had in a manner pre-engaged their Assent to the like Bills when they should hereafter come before them as Privy Councellors, in order to be regularly Transmitted to the Parliament of *Ireland*, there to be passed into Laws of that Kingdom. But instead of all this, to meet with another Construction of what was done herein, and to have it pleaded against us as a Precedent of our Submission, and absolute Acquiescence in the Jurisdiction of the Parliaments of *England* over this Kingdom, is what we complain of as an Invasion (we humbly conceive,

ceive) of that *Legislative Right* which our Parliament of *Ireland* claims within this Kingdom.

The next Act pass'd in the Parliament of *England*, Binding *Ireland*, is that for *Abrogating the Oath of Supremacy in Ireland, and Appointing other Oaths*, 3 and 4 *William* and *Mary*, c. 2. To this the Parliament convened at *Dublin*, *Anno* 1692. under Lord *Sydney*, and that likewise *Anno* 1695. under Lord *Capel*, paid an intire Obedience. And by this ('tis alledged) we have *given up our Right*, if any we had, and have for ever acknowledged our *Subordination to the Parliament of England*. But let us a little consider the force of this Argument. Act appointing New Oaths

I readily grant, that this and the other fore-mentioned Acts in *England* since the Revolution, when they were made, were look'd upon highly in our Favour, and for our Benefit; and to them as *such*, we have conform'd our Selves. But then, in all Justice and Equity, our Submission herein is to be deem'd *purely voluntary*, and not at all proceeding

ceeding from the *Right* we conclude thereby in the Legislators. If a Man, who has *no Jurisdiction* over me, *command* me to do a thing that is *pleasing* to me, and I do it; it will not thence follow, that thereby he obtains an *Authority* over me, and that ever hereafter I must Obey him of *Duty*. If I *voluntarily* give my Money to a Man when I *please*, and think it *convenient* for me; this does not Authorize him at any time to *command* my Money from me when *he pleases*. If it be said, this allows Subjects to Obey only whileſt 'tis *convenient* for them. I pray it may be considered, whether any Men Obey *longer*, unleſs they be *forced* to it, and whether they will not *free* themſelves from this *Force* as ſoon as they can. 'Tis impoſſible to hinder Men from deſiring to *free* themſelves from *Uneaſineſs*, 'tis a Principle of Nature, and cannot be eradicated. If Submitting to an Inconvenience be a *leſs* Evil than endeavouring to Throw it off, Men will Submit. But if the Inconvenience grow upon them, and be *greater* than the hazard of getting

rid

rid of it, Men will Offer at puting it by, let the Statesman or Divine say what they can.

But I shall yet go a little further, and venture to Assert, That the Right of being subject *Only* to such Laws to which Men give their *own Consent*, is so inherent to all Mankind, and founded on such Immutable Laws of Nature and Reason, that it is not to be *alien'd*, or *Given up*, by any Body of Men whatsoever. For the End of all Government and Laws being the Publick Good of the Commonwealth, in the Peace, Tranquility and Ease of every Member therein; whatsoever Act is contrary to this End, is in it self void, and of no effect: And therefore for a Company of Men to say, *Let us Unite our selves into Society, and let us be absolutely Govern'd by such Laws, as such a Legislator, without ever Consulting us, shall devise for us*; is always to be understood, *Provided we find them for our Benefit*: For to say, We will be Govern'd by those Laws, *whether they be Good or Hurtful to us*, is found in it self: For to what End

do Men join in Society, but to avoid Hurt, and the Inconveniencies of the State of Nature?

Moreover, I desire it may be considered, whether the General Application of the Chief part of the Irish Protestants, that were at that time in *London*, to the Parliament at *Westminster*, for obtaining these Laws, may not be taken for their *Consent*, and on that Account, and no other, these Acts may acquire their *Binding Force*. I know very well, this cannot be look'd upon as a Regular and Formal *Consent*, such as might be requisite in another more favourable Juncture. But yet it may be taken *talis qualis*, as far as their Circumstances at that time would allow, till a more convenient Opportunity might present it self.

I am sure, if some such Considerations as these, may not plead for us, we are of all his Majesties Subjects the most Unfortunate. The *Rights* and *Liberties* of the Parliament of *England* have received the greatest Corroboration

since his Majesties Accession to the Throne; and to have the *Rights* of *Scotland*, but the *Rights* of the People of *Ireland*, on the other hand, have received the greatest Weakening under his Reign, by our Submission (as 'tis alledg'd) to these Laws that have been made for us.

This certainly was not the Design of his Majesty's Glorious Expedition into these Kingdoms; that, we are told by Himself, (whom we cannot possibly mistrust) was to Assert the Rights and Liberties of these Nations; and we do humbly presume that his Majesty will be graciously pleased to permit us to Enjoy the Benefits thereof.

The Opinions of the Lawyers thereon.

And thus I have done with the *Fourth Article* proposed. As to the *Fifth*, viz. *The Opinions of the Learned in the Laws relating to this Matter*; 'tis in a great measure dispatch'd by what I have offered on the Fourth Head; I shall therefore be the more brief thereon. And I think indeed the only Person of Note that remains to be considered

Lord Chief Justice *Cook's* Opinion Discuss'd.

by us, is the Lord Chief Justice *Cook*, a Name of great Veneration with the Gentlemen of the Long Robe, and therefore to be treated with all Respect and Deference.

In his Seventh Report in *Calvin's* Case, he is proving that *Ireland* is a Dominion Separate and Divided from *England*; for this he quotes many Authorities (*a*) out of the Year-Books and Reports; and amongst others, he has that which I have before mention'd, pag. 91. 2 *R.* 3. f. 12. which he Transcribes in this manner, *Hibernia habet Parliamentum, & faciunt Leges, & nostra Statuta non ligant eos, quia non mittunt Milites ad Parliamentum*; and then adds, in a Parenthesis, (*which is to be understood, unless they be specially named*) *sed Personæ eorum sunt subjecti Regis sicut inhabitantes in Calesia, Gasconia, & Guyan.* The first thing I shall observe hereon, is the very *unfaithful* and *broken* Citation of this Passage, as will manifestly appear by comparing it with the true Transcript I have given thereof before, pag. 91. Were this all, 'twere in some measure par-

(*a*) 20 *H.* 6. 8. *Pilkington's* Case. 32 *H.* 6. 25. 20 *Eliz. Dyer.* 360. *Flowd. Com.* 360.

pardonable. But what cannot be excuſed, is the Unwarrantable Poſition in his Parentheſis, without the leaſt colour or ground for it in his Text. Herein he concludes downright Magiſterially, *So it muſt be, this is my Definitive Sentence*; as if his *Plain Aſſertion*, without any *other Reaſon*, ought to prevail; nay, even point blank againſt the irrefragable Reaſon of the Book he quotes. I confeſs in another place of *Calvin's* Caſe, *viz.* fol. 17. b. he gives this Aſſertion a Colour of Reaſon, by ſaying, *That tho' Ireland be a Diſtinct Dominion from England, yet the Title thereof being by* Conqueſt, *the ſame by Judgment of Law might by Expreſs Words be bound by the Parliaments of England* How far *Conqueſt* gives a Title, we have Enquired before: But I would fain know what Lord *Cook* means by *Judgment of Law*: Whether he means the *Law of Nature* and *Reaſon*, or of *Nations*; or the *Civil Laws* of our *Commonwealths*; in one of which Senſes, I conceive, will he, or any Man, be ever able to make out his Poſition.

Is the Reason of *England's* Parliament not Binding *Ireland*, *Because we do not send thither Representatives?* And is the Efficacy of this Reason taken off, by *our being Named* in an English Act? Why should sending Representatives to Parliament, Bind those that send them? Meerly because thereby the *Consent* of those that are Bound, is obtain'd, as far as those sort of Meetings can possibly permit; which is the very *Foundation* of the *Obligation* of all Laws. And is *Ireland's being Named* in an English Act of Parliament, the least step towards obtaining the *Consent* of the *People of Ireland*? If it be not, then certainly my Lord *Cook's* Parenthesis is to no purpose. And 'tis a wonder to me, that so many Men have run upon this vain Imagination, meerly from the Assertion of this Judge: For I challenge any Man to shew me, that any one *before* him, or any one *since*, but *from* him, has vended this *Doctrine*: And if the *bare Assertion* of a Judge, shall Bind a *whole Nation*, and Dis-

solve

solve the *Rights* and *Liberties* thereof, We shall make their Tongues very powerful, and constitute them greater Lawgivers than the greatest Senates. I do not see why my *Denying* it, should not be as *Authentick* as his *Affirming* it. 'Tis true, He was a great Lawyer and a powerful Judge; but had no more Authority to *make a Law*, than I or any Man else. But some will say, He was a Learned Judge, and may be supposed to have *Reason* for his Position. Why then does he not give it us? And then what he Asserts would Prevail, not from the *Authority of the Person*, but from the *Force of the Reason*. The most Learned in the Laws have no more power to make or alter a Constitution, than any other Man; And their Decisions shall no farther prevail, than supported by Reason and Equity. I conceive my Ld. Ch. Justice *Cooke* apply'd himself so wholly to the Study of the *Common Laws* of *England*, that he did not enquire far into the *Laws of Nature* and *Nations*; if he had, certainly he could never have been Guilty of such an Erroneous Slip;

He would have seen demonstrably, that *Consent* only gives Humane Laws their Force, and that therefore the Reason in the Case he quotes is unanswerable, *Quia non mittunt Milites ad Parliamentum.* Moreover, the Assertion of *Cooke* in this point is directly contrary to the whole tenour of the Case which he cites: For the very Act of Parliament on which the Debate of the Judges did arise, and which they deemed not to be of Force in *Ireland*, particularly names *Ireland*. So that here again L.d. *Cooke*'s Error appears most plainly. For this I refer to the Report, as I have exactly delivered it before pag. 90, 91. By which it appears clearly to be the unanimous Opinion of all the Judges then in the *Exchequer Chamber*: That *within the Land of Ireland*, the Parliaments of *England* have no Jurisdiction whatever they may have over the Subjects of *Ireland* on the *open Seas*: And the reason is given, *Quia Hibernia non mittit Milites ad Parliamentum in Angliâ.*

This

This Aſſertion likewiſe is inconſiſtent with himſelf in other parts of his Works. He tells us in his 4th Inſt. pag. 349. *That 'tis plain that not only King* John *(as all Men allow) but* Henry *the Second alſo, the Father of King* John, *did Ordain and Command, at the Inſtance of the Iriſh, That ſuch Laws as had been in* England *ſhould be Obſerv'd and of Force in* Ireland. *Hereby* Ireland *being of it ſelf a diſtinct Dominion, and no part of the Kingdom of* England, *was to have Parliaments holden there as in* England. And in pag. 12. he tells us, *That* Henry *the Second ſent a Modus into* Ireland, *directing them how to hold their Parliaments.* But to what end was all this, if *Ireland* nevertheleſs were ſubject to the Parliament of *England?* The King and Parliaments of theſe Kingdoms are the ſupream Legiſlators; If *Ireland* be ſubject to Two (its Own, and that of *England*) it has *Two Supreams*; 'tis not impoſſible, but they may Enact *different or contrary* Sanctions; which of theſe ſhall the People Obey? He tells us in *Calvin*'s Caſe

fol.

fol. 17. b. *That if a King hath a Christian Kingdom* by Conquest, as Henry *the Second had* Ireland, *after King* John *had given to them, being under his Obedience, and Subjection, the Laws of* England *for the Government of that Country, no succeeding King could alter the same without Parliament.* Which, by the way, seems directly contradictory to what he says concerning *Ireland* six lines below this last cited passage. So that we may observe my Lord *Cook* enormously stumbling at every turn in this Point.

Opinions of other Judges, in Favour of *Ireland.*

Thus I have done with this Reverend Judge; and, in him, with the only *Positive Opinion against us.* I shall now consider what our Law-Books offer in our *Favour* on this Point.

To this purpose we meet a Case fully apposite, reported in the Year-Book of the 20th of *Henry* the 6th, fol. 8. between one *John Pilkington* and one *A.*

*Pilkintons* Case.

*Pilkington* brought a *Scire Facias* against *A.* to shew Cause, why Letters

ters Patents whereby the King had granted an Office in *Ireland* to the said *A.* should not be repeal'd, since the said *Pilkington* had the same Office granted to him by former Letters Patents of the same King to be occupied by himself or his Deputy. Whereupon *A.* pleaded, That the Land of *Ireland*, time out of Memory, hath been a Land separated and distinct from the Land of *England*, and Ruled and Governed by the Customs of the same Land of *Ireland*. That the Lords of the same Land, which are of the King's Council, have used from time to time, in the absence of the King, to Elect a *Justice*, who hath Power to Pardon and Punish all Felons, &c. and to call a Parliament, and by the Advice of the Lords and Commonalty to make Statutes. He alledged further, That a Parliament was Assembled, and that it was Ordain'd by the said Parliament, (*a*) That every Man who had an Office within the said Land, before a certain day, shall occupy the said Office by himself, otherwise, he should forfeit. He shew'd that *Pilkington* Occupied by a Deputy;

(*a*) This Statute we may reckon amongst the number of those that are lost during the long Intervals of our Irish Acts, noted before page 65. to be about 118 Years.

purty; and that therefore his Office was void, and that the King had granted the ſaid Office to him the ſaid *A.* Hereupon *Pilkington* Demurr'd in Law; and it was debated by the Judges, *Telverton*, *Forteſcue*, *Portington*, *Markham*, and *Aſcough*, whether the ſaid Preſcription in relation to the State and Government of *Ireland*, be *good* or *void* in Law. *Telverton* and *Portington* held the Preſcription *void*. But *Forteſcue*, *Markham*, and *Aſcough* held the Preſcription *good*; and that the Letters Patents made to *A.* were good, and ought not to be Repeal'd. And in this it was agreed by *Forteſcue* and *Portington*, That if a Tenth or Fifteenth be granted by Parliament in *England*, that ſhall not Bind *Ireland*, althongh the King ſhould ſend the ſame Statute into *Ireland* under his Great Seal; Except they in *Ireland* will in their Parliament Approve it; *Becauſe they have not any Commandment by Writ to come to the Parliament of England.* And this was not Denied by *Markham*, *Telverton*, or *Aſcough*.

The

The *Merchants of Waterford's Case* which I have observed before, pag. 90. as Reported in the Year Book of the 2d. of *Richard* the 3d. fol. 11, 12, is notorious on our behalf, but needs not be here repeated. Merchants of *Waterford's* Case.

The Case of the Prior of *Lanthony* in *Wales*, mentioned by Mr. *Pryn* against the 4th Inst. ch. 76. p. 313. is usually cited *against* us. But I conceive 'tis so far from proving this, that 'tis very much in our Behalf. The Case was briefly thus. The Prior of *Lanthony* brought an Action in the *Com. Pleas* of *Ireland* against the of Prior *Mollingar*, for an Arrear of an Annuity, and Judgment went against the Prior of *Mollingar*; hereon the Prior of *Mollingar* brought a Writ of Error in the *King's Bench* of *Ireland*, and the Judgment was affirmed. Then the Prior of *Mollingar* Appeal'd to the Parliament in *Ireland* held 5 *Hen.* 6. before *James Butler* Earl of *Ormond*, and the Parliament Revers'd both Judgments. The Prior of *Lanthony* removed all into the *King's Bench* in *England*; but the *King's* Prior of *Lanthony's* Case.

*Bench*

*Bench* refused to intermeddle, *as having no Power over what had pass'd in the Parliament of Ireland.* Hereupon the Prior of *Lanthony* Appeal'd to the Parliament of *England.* And it does not appear by the Parliament Roll (*a*) that any thing was done on this Appeal; all that is Entred being only the Petition it self at the end of the Roll. *Vid. Pryn* against the 4th Instit. chap. 76. p. 313.

(*a*) *Rot. Parl. An.* 8. *H.* 6. *in sch.*

Now whether this be a Precedent proving the Subordination of our Irish Parliament to that of *England*, I leave the Reader to judge. To me it seems the *clear contrary.* For first we may observe, the *King's Bench* in *England* absolutely disclaiming any Cognisance of what had passed in the Parliament of *Ireland.* And next we may observe, That nothing at all was done therein upon the Appeal to the Parliament of *England*: Certainly if the Parliament of *England* had thought themselves to have a Right to Enquire into this Matter, they had so done, one way or t'other, and not left the Matter Undetermin'd and in Suspence. It

It has ever been acknowledged that the Kingdom of *Ireland* is inseparably annex'd to the Imperial Crown of *England*. The Obligation that our Legislature lies under by *Poyning's Act*, 10 *H.* 7. c. 4. makes this Tye between the two Kingdoms indissoluble. And we must ever own it our Happiness to be thus Annex'd to *England*. And that the Kings and Queens of *England* are by undoubted Right, *ipso facto* Kings and Queens of *Ireland*. And from hence we may reasonably conclude, that if any Acts of Parliament made in *England*, should be of force in *Ireland*, before they are Received there in Parliament, they should be more especially such Acts as relate to the *Succession* and *Settlement of the Crown*, and *Recognition* of the Kings Title thereto, and the *Power* and *Jurisdiction* of the King. And yet we find in the Irish Statutes, 28 *Hen.* VIII. c. 2. *An Act for the Succession of the King and Queen Anne*; and another, Chap. 5. declaring the King to be *Supream Head of the Church of Ireland*; both which Acts had formerly

Argument from Acts of Succession and Recognition pass'd in *Ireland*.

pass'd

pass'd in the Parliament of *England*. So likewise we find amongst the Irish Statutes *Acts of Recognition of the Kings Title to Ireland*, in the Reigns of *Henry* the Eighth, Queen *Elizabeth*, King *James*, King *Charles* the Second, King *William* and Queen *Mary*. By which it appears that *Ireland*, tho' Annex'd to the Crown of *England*, has always been look'd upon to be *a Kingdom Compleat within it self*, and to have all Jurisdiction to an *Absolute* Kingdom belonging, and Subordinate to no Legislative Authority on Earth. Tho', 'tis to be Noted, these English Acts relating to the Succession, and Recognition of the Kings Title, do particularly Name *Ireland*.

*Ireland's* State Ecclesiastical Independent.

As the *Civil* State of *Ireland* is thus *Absolute* within it self, so likewise is our State *Ecclesiastical*. This is manifest by the *Canons* and *Constitutions*, and even by the *Articles* of the *Church of Ireland*, which differ in some things from those of the *Church of England*. And in all the Charters and Grants of Liberties and Immunities to

*Ireland*,

*Ireland*, we ſtill find this, That *Holy Church ſhall be Free*, &c. I would fain know what is meant here by the word *Free*: Certainly if our *Church* be *Free* and Abſolute within it ſelf, our *State* muſt be ſo likewiſe; for how our *Civil* and *Eccleſiaſtical* Government is now interwoven, every body knows. But I will not enlarge on this head, it ſuffices only to hint it; I ſhall detain my ſelf to our *Civil Government*.

Another Argument againſt the Parliament of *England*'s Juriſdiction over *Ireland*, I take from a Record in *Reyley*'s *Placita Parliamentaria*, pag. 569. to this effect: (*a*) In the 14th of *Edward* the Second, the King ſent his Letters Patents to the Lord Juſtice of *Ireland*, letting him know, That he had been moved by his *Parliament* at *Weſtminſter*, that he would give Order that the *Iriſh Natives* of *Ireland*, might enjoy the *Laws of England* concerning *Life* and *Member*, in as large and ample manner as the *Engliſh* of *Ireland* enjoy'd the ſame. This therefore the King gives in Commandment,

Argument from a Record in *Reyley*.

(a) 14 *Ed.* 2. *Par.* 2. *Memb.* 21 *Int.*

mandment, and orders accordingly, by these his Letters Patents. From hence, I say, we may gather, That the Parliament of *England* did not then take upon them to have any *Jurisdiction* in *Ireland*, (for then they would have made a Law for *Ireland* to this Effect) but instead thereof, they Apply to the *King*, that he would interpose his Commands, and give Directions that this great Branch of the *Common Law* of *England* should be put in Execution in *Ireland* indifferently to all the Kings Subjects there, *pursuant* to the *Original Compact* made with them on their first Submission to the Crown of *England*.

Objection drawn from a Writ of Error.

Let us now consider the great Objection drawn from a *Writ of Error*'s lying from the *Kings Bench* of *England*, on a Judgment given in the *Kings Bench* in *Ireland*; which proves (as 'tis insisted on) that there is a *Subordination* of *Ireland* to *England*; and that if an *Inferiour* Court of Judicature in *England*, can thus take cognizance of, and over-rule the Proceedings in the like Court of *Ireland*; it will follow,

follow, that the *Supream* Court of Parliament in *England* may do the ſame, in relation to the Proceedings of the Court of Parliament in *Ireland*.

It muſt be confeſs'd that this has been the conſtant Practice; and it ſeems to be the great thing that induced my Lord *Cook* to believe that an Act of Parliament in *England*, and mentioning or Ineluding *Ireland*, ſhould Bind here. The Subordination of *Ireland* to *England*, he ſeems to infer from the Subordination of the *Kings Bench* of *Ireland*, to the *Kings Bench* of *England*. But to this I anſwer:

1. That 'tis the Opinion of ſeveral Learned in the Laws of *Ireland*, That this Removal of a Judgment from the *Kings Bench* of *Ireland*, by *Writ of Error*, into the *Kings Bench* of *England*, is founded on an Act of Parliament in *Ireland*, which is loſt amongſt a great number of other Acts, which we want for the ſpace of 130 years at one time, and of 120 at another time, as we have noted before,

pag. 65. But it being only a *General Tradition*, that there was such an Act of our Parliament, we only offer it as a *Surmise*, the Statute it self does not appear.

2. Where a Judgment in *Ireland* is Removed, to be Revers'd in *England*, the Judges in *England* ought, and always do judge, according to the *Laws* and *Customs* of *Ireland*, and not according to the Laws and Customs of *England*, any otherwise than as these may be of Force in *Ireland*; but if in any thing the two Laws differ, the Law of *Ireland* must prevail, and guide their Judgment. And therefore in the Case of one *Kelly*, Removed to the *Kings Bench* in *England*, in the beginning of King *Charles* the First, one Error was assigned that the *Præcipe* was of *Woods* and *Underwoods*, which is a manifest Error, if brought in *England*; but the Judges finding the Use to be *Otherwise* in *Ireland*, judged it *No Error*. So in *Crook*, *Charles*, fol. 511. *Mulcarry* verf. *Eyres*. Error was assigned for that the Declaration was of one hundred

Acres

Acres of *Bogg*, which is a word not known in *England*; but 'twas ſaid, It was well enough underſtood in *Ireland*, and ſo adjudged *No Error*.

From whence, I conceive, 'tis manifeſt, that the Juriſdiction of the Kings Bench in *England*, over a Judgment in the Kings Bench of *Ireland*, does not proceed from any Subordination of one Kingdom to the other; but from ſome other Reaſon, which we ſhall endeavour to make out.

3. We have before obſerved, That in the Reign of K. *Henry* the Third, *Gerald Fitz-Maurice*, Lord Juſtice of *Ireland*, ſent four Knights to know what was held for Law in *England* in the Caſe of *Coparceners*. The Occaſion of which Meſſage (as before we have noted out of the Kings Reſcript) was, becauſe the Kings Juſtice of *Ireland* was ignorant what the Law was. We may reaſonably imagine that there were many Meſſages of this kind; for in the Infancy of the Engliſh Government, it may well be ſup-

poſed, that the Judges in *Ireland* were not ſo deeply verſed in the Laws of *England*: This occaſioned Meſſages to *England*, *Before* Judgment given in *Ireland*, to be inform'd of the Law. And *After* Decrees made, Perſons who thought themſelves aggrieved by *Erroneous* Judgments, apply'd themſelves to the King in *England* for Redreſs. Thus it muſt be, that Writs of Error (unleſs they had their Sanction in Parliament) became in uſe. Complaints to the King by thoſe that thought themſelves injur'd, increaſed; and at laſt grew into Cuſtom, and obtain'd the Force of Law.

Perhaps it may be Objected, That if the Judges of the Kings Bench in *England* ought to Regulate their Judgment by the Cuſtoms of *Ireland*, and not of *England*, it will follow, that this Original which we aſſign of Writs of Error to *England*, is not right.

I Anſwer, That this may be the *Primary Original*, and yet conſiſt well enough with what we have before

before laid down: For tho' the Common Law of *England* was to be the Common Law of *Ireland*, and *Ireland* at the beginning of its Engliſh Government might frequently ſend into *England* to be inform'd about it; yet this does not hinder, but *Ireland*, in a long Proceſs of Time, may have ſome ſmaller Cuſtoms and Laws of its own, gradually but inſenſibly crept into Practice, that may in ſome meaſure differ from the Cuſtoms and Practice of *England*; and where there is any ſuch, the Judges of *England* muſt regulate their Sentence accordingly, tho' the firſt Riſe of Writs of Error to *England*, may be as we have here ſuggeſted. In like manner, where the Statute-Law of *Ireland* differs from that of *England*, the Judges of *England* will regulate their Judgments by the Statute-law of *Ireland*; This is the conſtant Practice, and notoriouſly known in *Weſtminſter-Hall*. From which it appears, that removing a Judgment from the Kings Bench of *Ireland*, to the Kings Bench of *England*, is but an Appeal to the King in his Bench

of *England*, for his Senſe, Judgement, or Expoſition of the Laws of *Ireland*. But of this more hereafter.

4. When a *Writ of Error* is Returned into the Kings Bench of *England*, Suit is made to the *King only*; The Matter lies *altogether before Him*; and the Party complaining applies to *No Part* of the Political Government of *England* for Redreſs, but to the *King of Ireland only*, who is in *England*. That the *King only* is ſued to, our Law-Books make Plain. This Court is call'd *Curia Domini Regis*, and *Aula Regia*, becauſe the King uſed to ſit there in Perſon, as *Lambard* tells us; And every Cauſe brought thither, is ſaid to be *coram Domino Rege*, even at this very day. *Cooke* 4 Inſt. p. 72. Therefore if a Writ be returnable *coram nobis ubicunque fuerimus*, 'tis to be Return'd to the *King's Bench*. But if it be Returnable *coram Juſticiariis noſtris apud Weſtm.* 'tis to be Return'd into the *Common Pleas*. This Court, as *Glanvil* and other Antients tells us, uſed to Travel with the King, where-

where-ever he went. And *Fleta*, in describing this Court, says, *Habet Rex Curiam suam & Justiciarios suos, coram quibus, & non alibi nisi coram semet ipso*, &c. *falsa Judicia & Errores revertuntur & Corriguntur.* The King then (as *Britton* says) having Supream Jurisdiction in his Realm, to judge in all Causes whatsoever; therefore it is, that *Erroneous Judgments* were brought to him out of *Ireland.* But this does not argue that *Ireland* is therefore *Subordinate to England*; for the People of *Ireland* are the *Subjects* of the King to whom they Appeal. And 'tis not from the *Country* where the Court is held, but from the *Presence* and *Authority* of the King (to whom the People of *Ireland* have as good a Title as the People of *England*) that the *Præeminence of the Jurisdiction* does flow. And I question not, but in former times, when these Courts were first Erected, and when the King Exerted a greater Power in Judicature than he does now, and he used to sit in his own Court, that if he had Travell'd into *Ireland*, and the Court had follow'd him

him thither; Erroneous Judgments might have been removed *from England* before him *into his Court in Ireland*; for so certainly it must be, since the Court Travell'd with the King. From hence it appears, that all the Jurisdiction, that the Kings Bench in *England*, has over the Kings Bench in *Ireland*, arises *only* from the *Kings Presence* in the former. And the same may be said of the *Chancery* in *England*, if it will assume any Power to Controul the *Chancery* in *Ireland*; because (as *Lambard* says, p.69,70.) The Chancery did follow the *King*, as the Kings Bench did; and that, as he tells us out of the Lord Chief Justice *Scroope*, the *Chancery* and the *Kings Bench* were once but one Place. But if this be the ground of the Jurisdiction of the Kings Bench in *England* over the Kings Bench in *Ireland*, (as I am fully perswaded it is) the Parliament in *England* cannot from hence claim any Right of Jurisdiction in *Ireland*, because they claim *a Jurisdiction of their own*; and their Court is not the *Kings Court*, in that *proper* and *strict* sence that the *Kings Bench* is.

But

But granting that the *Subordination* of the *Kings Bench* in *Ireland*, to the *Kings Bench* in *England*, be rightly concluded from a *Writ of Error* out of the *latter*, lying on a Judgment in the *former*. I ſee no Reaſon from thence to conclude, that therefore the Parliament of *Ireland* is *Subordinate* to the Parliament in *England*, unleſs we make any *one ſort* of Subordination, or in any *one part* of Juriſdiction, to be a Subordination in *all Points*, and all parts of Juriſdiction. The Subjects of *Ireland* may Appeal to the King in his Bench in *England*, for the *Expounding* of the *Old* common and Statute-Law of *Ireland*; will it therefore follow that the Parliament of *England* ſhall make *New Laws* to bind the Subjects in *Ireland*? I ſee no manner of Conſequence in it; unleſs we take *Expounding Old Laws*, (or *Laws already made*) *in the Kings Bench*, and *making New Laws in Parliament*, to be *one* and the *ſame thing*. I believe the beſt Logician in *Europe* will hardly make a Chain of *Syllogiſms*, that from ſuch *Premiſes*, will

will regularly induce such a *Conclusion*.

To close this Point, We find that a Judgment of the Kings Bench in *Ireland*, may be Removed by a Writ of Error to the Parliament in *Ireland*: But the Judgment of the Parliament of *Ireland* was never question'd in the Parliament of *England*. This Appears from the *Prior of Lanthony*'s Case aforegoing.

Declaration in the Irish Act of Faculties.

I shall conclude this our Fifth Article with a memorable Passage out of our Irish Statutes, which seems to strengthen what we have delivered on the Business of a *Writ of Error*, as well as the chief Doctrine I drive at; and that is 28 *H.* VIII. Chap. 19. *The Act of Faculties*. This Statute is a Recital at large of the English Act of the 25 *Hen.* VIII. c. 21. In the Preamble of which English Act 'tis Declared, *That this Your Graces Realm Recognizing no Superiour but Your Grace, hath been and yet is free from any Subjection to any Mans Laws, but only such as have been Devised within*

*in*

*in this Realm, for the Wealth of the ſame, or to ſuch others, as by Sufferance of Your Grace and Your Progenitors, the People of the Realm have taken at their Free Liberties by their own Conſent; and have bound themſelves by long Uſe and Cuſtom to the Obſervance of*, &c.

This Declaration, with the other Clauſes of the ſaid Engliſh Act, is *verbatim* recited in the Iriſh *Act of Faculties*; and in the ſaid Iriſh Act it is Enacted, *That the ſaid Engliſh Act, and every thing and things therein contained, ſhall be Eſtabliſhed, Affirmed, Taken, Obey'd and Accepted within this Land of Ireland as a good and perfect Law, and ſhall be within the ſaid Land of the ſame Force, Effect, Quality, Condition, Strength and Vertue, to all Purpoſes and Intents, as it is within the Realm of* England; (if ſo, then the ſaid Clauſe declares our *Right* of being bound only by Laws to which we *Conſent*, as it does the *Right of the People of* England) *And that all Subjects within the ſaid Land of* Ireland, *ſhall enjoy the Profit and Commodity thereof, in like manner*

as

*as the Kings Subjects of the Realm of* England.

*Farther Reasons offered in behalf of Ireland.*

I am now Arrived at our Sixth and Last Article Proposed, *viz.* The *Reasons and Arguments that may be be farther Offered on one side and t'other in this Debate.*

*England's* Title to *Ireland* by Purchase.

I have before taken notice of the Title *England* pretends over us from *Conquest*: I have likewise enquired into the *Precedents* on one side and t'other, from *Acts of Parliament*, from *Records*, and from *Reports* of the Learned in the Laws. There remains another Pretence or two for this *Subordination*, to be Considered; and one is founded on *Purchase*.

'Tis said, That vast Quantity of Treasure, that from time to time has been spent by *England* in Reducing the Rebellions and carrying on the Wars of *Ireland*, has given them a just *Title* at least to the *Lands* and *Inheritances* of the Rebels, and to the absolute Disposal thereof in their Parliament; And as particular Examples of this,

we

we are told of the great Sums Advanced by *England* for ſuppreſsing the Rebellion of the Iriſh Papiſts in 41. and Oppoſing the late Rebellion ſince King *WILLIAM*'s Acceſſion to the Throne.

To this I Anſwer, That in a War there is all Reaſon imaginable that the Eſtates of the Unjuſt Oppoſers ſhould go to repair the the Damage that is done. This I have briefly hinted before. But if we conſider the Wars of *Ireland*, we ſhall perceive they do not reſemble the common Caſe of Wars between two Foreign Enemies; Ours are rather Rebellions, or *Inteſtine Commotions*; that is, The *Iriſh Papiſts* riſing againſt the *King* and *Proteſtants* of *Ireland*; and then 'tis plain, that if theſe Latter, by the Aſſiſtance of their Brethren of *England*, and their Purſe, do prove Victorious, the People of *England* ought to be fully Repaid: But then the manner of their Payment, and in what way it ſhall be Levied, ought to be left to the People of *Ireland* in Parliament Aſſembled: And ſo it was after the

the Rebellion of 41. The *Adventurers* then were at vaſt Charges, and there were ſeveral Acts of Parliament in *England* made for their Re-imburſing, by diſpoſing to them the Rebels Lands. But after all, it was thought Reaſonable that the Parliament of *Ireland* ſhould do this in their own way; and therefore the *Acts of Settlement* and *Explanation*, made all the former Engliſh Acts of *No Force*; or at leaſt did very much *Alter* them in many Particulars, as we have Noted before. In like manner we allow that *England* ought to be repaid all their Expences in ſuppreſſing this late Rebellion: All we deſire is, That, in Preſervation of our own Rights and Liberties, we may do it in our own Methods regularly in our own Parliament: And if the Re-imburſement be all that *England* ſtands upon, what availeth it whether it be done this way or that way, ſo it be done? We have an Example of this in Point between *England* and *Holland* in the Glorious Revolution under His Preſent Majeſty: *Holland* in Aſſiſting *England* Expended 600000 Pounds,

Pounds; and the English Parliament fairly repay'd them. It would have look'd oddly for *Holland* to have insisted on Disposing of Lord *Bowin's* and other Estates, by their own Laws, to re-imburse themselves.

'Tis an Ungenerous thing to vilifie good Offices, I am far from doing it, but with all possible Gratitude Acknowledge the Mighty Benefits *Ireland* has often receiv'd from *England*, in helping to suppress the Rebellions of this Country: To *England's* Charitable Assistance our Lives and Fortunes are owing. But with all humble Submission, I desire it may be considered, whether *England* did not at the same time propose the *Prevention of their own Danger*, that would necessarily have attended our Ruine; if so, 'twas in some measure their *own Battels* they fought, when they fought for *Ireland*; and a great part of their Expence must be reckon'd in their *own Defence*.

Another thing alledged against *Ireland* is this; If a Foreign Na-

Object. *Ireland* prejudicial to *England's* Trade, therefore to be Bound.

tion, as *France* or *Spain* for instance, prove prejudicial to *England*, in its Trade, or any other way; *England*, if it be stronger, redresses it self by Force of Arms, or Denouncing War; and why may not *England*, if *Ireland* lies cross their Interests, restrain *Ireland*, and bind it by Laws, and maintain these Laws by Force?

To this I answer: First, That it will hardly be instanced, that any Nation ever Declared War with another, meerly for over-topping them in some signal Advantage, which otherwise, or but for their Endeavours, they might have reaped. *War* only is Justifiable for *Injustice* done, or *Violence* offer'd, or *Rights* detain'd. I cannot by the Law of Nations, quarrel with a Man, because he, going before me in the Road, finds a Piece of Gold, which possibly, if he had not taken it up, I might have light upon and gotten. 'Tis true, we often see Wars commenced on this Account *under-hand*, and on Emulation in Trade and Riches; but then this is never made the *Open Pre-*

*tence*

*tence*, some other *Colour* it must receive, or else it would not look *fair*; which shews plainly, that this Pretence of *being Prejudicial*, or of reaping Advantages which otherwise you might partake of, is not *Justifiable* in it self. But granting that it were a good Justification of a War with a *Foreign* Nation, it will make nothing in the Case between *England* and *Ireland*; for if it did, why does it not operate in the same manner between *England* and *Scotland*, and consequently in like manner draw after it *England*'s binding *Scotland* by their Laws at *Westminster*? We are all the *same* Kings Subjects, the Children of one *Common Parent*, and tho we may have our *Distinct* Rights and Inheritances absolutely within our selves; yet we ought not, when these do chance a little to interfere to the prejudice of one or t'other side, immediately to treat one another as Enemies; fair Amicable Propositions should be proposed, and when these are not hearkened to, then 'tis time enough to be at Enmity, and use Force.

Object. *Ireland a Colony.*

The last thing I shall take Notice of, that some raise against us, is, That *Ireland* is to be look'd upon only as a *Colony* from *England*: And therefore as the *Roman Colonies* were subject to, and bound by, the Laws made by the *Senate* at *Rome*; so ought *Ireland* by those made by the *Great Council* at *Westminster*. Of all the Objections raised against us, I take this to be the most Extravagant; it seems not to have the least *Foundation* or *Colour* from *Reason* or *Record*: Does it not manifestly appear by the *Constitution* of *Ireland*, that 'tis a *Compleat Kingdom* within it self? Do not the Kings of *England* bear the *Stile of Ireland* amongst the rest of their Kingdoms? Is this Agreeable to the nature of a *Colony*? Do they use the Title of Kings of *Virginia*, *New-England*, or *Maryland*? Was not *Ireland* given by *Henry* the Second in a Parliament at *Oxford* to his Son *John*, and made thereby an *Absolute Kingdom*, *Separate* and wholly *Independent* on *England*, till they both came United again in him, after the

Death

Death of his Brother *Richard* without Issue? Have not multitudes of Acts of Parliament both in *England* and *Ireland*, declared *Ireland a Compleat Kingdom*? Is not *Ireland* stiled in them All, the *Kingdom*, or *Realm* of *Ireland*? Do these *Names* agree to a *Colony*? Have we not a Parliament, and Courts of Judicature? Do these *things* agree with a *Colony*? This on all hands involves so many Absurdities, that I think it deserves nothing more of our Consideration.

These being the only remaining Arguments that are sometimes mention'd *Against us*, I now proceed to offer what I humbly conceive *Demonstrates* the Justice of our Cause.

And herein I must beg the Reader's Patience, if now and then I am forced lightly to touch upon some Particulars foregoing. I shall Endeavour all I can to avoid prolix Repetitions; but my Subject requires that sometimes I just mention, or refer to, several Notes before deliver'ed.

First therefore, I say, *That* Ireland *should be Bound by Acts of Parliament made in* England, *is against Reason, and the Common Rights of all Mankind.*

Against the Rights of Mankind.

All Men are by Nature in a ſtate of Equality, in reſpect of Juriſdiction or Dominion: This I take to be a Principle in it ſelf ſo evident, that it ſtands in need of little Proof. 'Tis not to be conceiv'd, that Creatures of the ſame Species and Rank, promiſcuouſly born to all the ſame Advantages of Nature, and the uſe of the ſame Faculties, ſhould be Subordinate and Subject one to another; Theſe to this or that of the ſame Kind. On this Equality in Nature is founded that Right which all Men claim, of being free from all Subjection to Poſitive Laws, till by their own *Conſent* they give up their Freedom, by entring into Civil Societies for the common Benefit of all the Members thereof. And on this *Conſent* depends the *Obligation* of all *Humane Laws*; inſomuch that without it, by the Unanimous Opinion of all

Conſent only gives Law force.

all Juriſdiction, no Sanctions are of any Force. For this let us Appeal, amongſt many, only to the Judicious Mr. Hooker's Eccleſ. Polity, Book 1. Sect. 10. Lond. Edit. 1676. Thus He.

*Howbeit, Laws do not take their Conſtraining force from the Quality of ſuch as Deviſe them, but from that Power which doth give them the ſtrength of Laws. That which we ſpake before, concerning the Power of Government, muſt here be applied to the Power of making Laws whereby to Govern, which Power God hath over All; and by the Natural Law, whereunto he hath made all ſubject, the Lawful Power of making Laws, to command whole Politick Societies of Men, belongeth ſo properly unto the ſame entire Societies, that for any Prince or Potentate, of what kind ſoever upon Earth, to exerciſe the ſame of himſelf, and not either by expreſs Commiſſion immediately and perſonally received from God, or elſe by Authority derived at the firſt from their Conſent, upon whoſe Perſons they impoſe Laws, it is no better than meer Tyranny. Laws they are not therefore, which* Publick Ap-

probation *hath not made so*. But Approbation not only they Give, who Personally declare their *Assent by Voice, Sign, or Act; but also when others do it in their Names*, by Right Originally, at the least, derived from them: *As in Parliaments, Councils*, &c.

Again, *Sith Men Naturally have no full and perfect Power to command whole Politick Multitudes of Men; therefore utterly without our Consent, we could in such sort be at no Mans Commandment living. And to be commanded we do consent, when that Society whereof we are part, hath at any time before consented, without revoking the same after by the like Universal Agreement. Wherefore as any Mans Deed past is good, as long as himself continueth, so the Act of a Publick Society of Men, done five hundred years sithence, standeth as theirs who presently are of the same Societies, because Corporations are Immortal; we were then alive in our Predecessors, and they in their Successors do still live. Laws therefore Humane of what kind soever, are available by Consent*, &c.

And

*And again, But what matter the Law of Nations doth contain, I omit to search; the strength and vertue of that Law is such, that no particular Nation can lawfully prejudice the same by any their several Laws and Ordinances, more then a Man by his Private Resolutions the Law of the whole Commonwealth or State wherein he liveth; for as Civil Law being the act of a whole Body Politick, doth therefore over-rule each Civil part of the same Body; so there is no Reason that any one Commonwealth of it self, should to the Prejudice of another, annihilate that wherein upon the whole World hath Agreed.*

To the same purpose may we find the Universal Agreement of all Civilians, *Grotius*, *Puffendorf*, *Locke's Treat. Government*, &c.

No one or more Men, can by *Nature* challenge any *Right*, *Liberty* or *Freedom*, or any Ease in his *Property*, *Estate* or *Conscience*, which all other Men have not an *Equally Just Claim to*. Is *England* a *Free* People? So ought *France* to be. Is *Poland* so? *Turky* likewise, and all the

the *Eastern Dominions*, ought so to be so: And the same runs throughout the whole *Race of Mankind*.

Against the Common Law of *England*.

Secondly, 'Tis against the Common Laws of *England*, which are of Force both in *England* and *Ireland*, by the *Original Compact* before hinted. It is Declared by both Houses of the Parliament of *England*, 1 *Jac.* cap. 1. *That in the High Court of Parliament, all the whole Body of the Realm, and every particular Member thereof, either in Person, or by Representation (upon their own Free Elections) are* by the Laws of this Realm *deem'd to be Personally present.* Is this then the common Law of *England*, and the Birthright of every Free-born English Subject? And shall we of this Kingdom be deny'd it, by having Laws imposed on us, where we are neither Personally, nor Representatively present? My Lord *Cooke* in his 4th Inst. cap. 1. saith, That *all the Lords Spiritual and Temporal, and all the Commons of the whole Realm, ought* ex Debito Justiciæ *to be Summon'd to Parliament, and none of them ought to be Omitted.* Hence

it

it is call'd *Generale Concilium* in the Stat. of *Westminst.* 1. and *Commune Concilium*, because it is to comprehend all Persons and Estates in the whole Kingdom. And this is the very Reason given in the Case of the *Merchants of Waterford* foregoing, why Statutes made in *England*, should not bind them in *Ireland*, *Quia non habent Milites hic in Parliamento*; Because they have no *Representatives* in the Parliament of *England*. My Lord *Hobbard* in the Case of *Savage* and *Day*, pronounced it for Law, That whatever is against Natural Equity and Reason, is against Law; Nay, if an Act of Parliament were made against Natural Equity and Reason, that Act was void. Whether it be not against Equity and Reason, that a Kingdom regulated within it self, and having its own Parliament, should be Bound *without their Consent*, by the Parliament of another Kingdom, I leave the Reader to consider. My Lord *Cooke* likewise in the first Part of his Institutes, fol. 97. b. saith, *Nihil quod est contra Rationem est Licitum*. And in the old *Modus Tenendi Parliamenta* of *England*,

*England*, said to be writ about *Edward the Confessor's* time, and to have been Confirmed and Approved by *William the Conqueror*. It is expresly declared, That all the *Lords Spiritual and Temporal*, and the *Knights, Citizens, and Burgesses ought to be* summoned to Parliament. The very same is in the *Modus* sent into *Ireland* by *Henry* the 2d. And in *King John's Great Charter* dated 17. *Johannis*, 'tis granted in these words, *Et ad habend. Commune Concilium Regni de Auxiliis & Scutagiis Assidendis, Submoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites, & Majores Barones, Regni Sigillatim per Literas Nostras, & faciemus* submoneri *in generali per Vicecomites* omnes alios, &c. *Math. Paris ad An.* 17. *Johann.* All are to be Summoned to Parliament, the *Nobility* by special Writts, the *Commons* by general Writts to the Sheriffs. And is this the *Common Law* of *England*? Is this part of those *Liberæ Consuetudines*, that were contained in the Great *Charter* of the *Liberties* of the People of *England*, And were so solemnly granted by *Henry* II.

King

King *John*, and *Henry* the 3d, to the *People of Ireland*, that they should Enjoy and be Governed by; and unto which they were Sworn to be Obedient? And shall they be of Force *only in England*, and not in *Ireland*? Shall *Ireland* Receive these *Charters of Liberties*, and be no Partakers of the *Freedoms* therein contained? Or do these words signifie in *England one thing*, and in *Ireland no such thing*? This is so repugnant to all Natural Reason and Equity, that I hope no Rational Man will Contest it: I am sure if it be so, there's an end of all Speech amongst Men; All Compacts, Agreements, and Societies are to no purpose.

Against the Statute Law both of *England* and *Ireland*.

It is against the Statute Laws both of *England* and *Ireland*; this has been pretty fully disus'd before, however I shall here again take notice, That (x) in the 10th of *Henry* the 4th it was Enacted in *Ireland*, that Statutes made in *England* should not be of Force in *Ireland*, unless they were Allowed and Published by the Parliament of *Ireland*. And the like Statute was made the 29th of

(x) See before pag. 65.

of *Henry* the 6th. And in the 10th Year of *Henry* the 7th. Chap. 23 Irish Statutes, The Parliament which was held at *Drogheda*, before Sir *Christopher Preston*, Deputy to *Jasper Duke of Bedford*, Lieutenant of *Ireland*, was declared Void, for this Reason amongst others, *That there was no General Summons of the said Parliament to all the Shires, but only to Four*; And if Acts of Parliament made in *Ireland* shall not Bind that People, because some Counties were omitted: how much less shall either their Persons or Estates be Bound by those Acts *made in England*, wherein no one County, or Person of that Kingdom is present? In the (b) 25th of *Edward* the 1st. Cap. 6. It was Enacted by the Parliament of *England* in these Words, *Moreover from henceforth we shall take no manner of Aid, Tasks, or Prizes, but by the Common Assent of the Realm.* (c) And again in the *Statute of Liberties*, by the same King, Cap. 1. *De Tallag. non Concedend.* It is Enacted in these Words. *No Tallage or Aid shall be Taken or Levyed by Us, or Our Heirs, in Our Realm, without*

(b) Pultons Col. *Eng.* Stats. Edit. 1670. pag. 83.

(c) *Ibid.* page 75.

the

the Good Will and Assent of Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the Land. The like Liberties are specially Confirm'd to the Clergy, (d) through of Edward the 3d. And were these Statutes, and all other Statutes and Acts of the Parliament of England Ratified, Confirmed, and Adjudged by several Parliaments of Ireland to be of Force within this Realm: And shall the People of Ireland receive no Benefit by those Acts? Are those Statutes of Force in England only; And can they add no Immunity or Priviledge to the Kingdom of Ireland, which they are receiv'd there? Can the King and Parliament make Acts in England to Bind his Subjects of Ireland without their Consent? And can he make no Acts in Ireland with their Consent, whereby they may receive any Priviledge or Immunity? This were to make the Parliaments of Ireland wholly Illusory, and of no Effect. If this be Reasonable Doctrine, To what end was Poyning's Law in Ireland, (e) that makes all the Statutes of England before that, in Force in this King-

(d) ibid. Page 113.

(e) 10 H. 7. c. 22.

dom;

dom. This might as well have been done, and again undone, when they please, by a single Act of the English Parliament. But let us not make this light of Constitutions of Kingdoms, 'tis *Dangerous* to those who *do it*, 'tis *Grievous* to those that *suffer it*.

Moreover, Had the King or his Council of *England*, in the 10th year of *Hen.* VII. in the least dream of this Doctrine, to what end was all that strict Provision made by *Poyning's Act*, Irish Stat. cap. 4. That no Act of Parliament should pass in *Ireland*, before it was first Certified by the Chief Governour and Privy Council here, under the Broad Seal of this Kingdom, to the King and his Privy Council in *England*, and received their Approbation, and by them be remitted hither under the Broad Seal of *England*, here to be passed into a Law? The design of this Act, seems to be the Prevention of any thing passing in the Parliament of *Ireland Surreptitiously*, to the *Prejudice* of the *King*, or the *English Interest* of *Ireland*. But this was a

needless

needless Caution, if the King, and Parliament of *England*, had Power at any time to revoke or annul any such Proceedings. Upon this Act of *Poynings*, many and various Acts have past'd in *Ireland*, relating to the Explanation, Suspension, or farther Corroboration thereof, in divers Parliaments, both in *Henry* the Eighth's, *Phil.* & *Mary*'s, and Q. *Eliz.* Reigns; for which see the Irish Statutes. (a) All which shew that this *Doctrine* was hardly so much as *Surmised in those Days*, however we come to have it raised in these *Latter Times*.

(a) 28 H 8. c. 4. 28 H. 8. c. 20. 3 & 4 Ph. & M. c. 4. 11 Eliz. Sess. 2. c. 1. 11 Eliz. Sess. 3. c. 8.

Fourthly, 'Tis against several *Charters of Liberties* Granted unto the Kingdom of *Ireland*: This likewise is clearly made out by what foregoes. I shall only add in this place, That in the Patent Roll of the 17 *Rich.* 2. m. 34. *de Confirmatione*, There is a Confirmation of several *Liberties* and *Immunities* granted unto the Kingdom and People of *Ireland* by *Edw.* III. The Patent is somewhat long, but so much as concerns this Particular, I shall render *verbatim*, as I have it

Against several Concessions made to *Ireland*.

Transcribed from the Roll by Sir *William Domvile*, Attorny General in *Ireland* during the whole Reign of King *Charles* II.

*Rex omnibus, &c. Salutem. Inspeximus Literas Patentes Domini Edwardi nuper Regis Angliæ, Avi nostri fact. in hæc verba:* Edwardus *Dei Gra. Rex Angliæ & Franciæ, & Dominus Hiberniæ, Archiepiscopis, Episcopis, Abbatibus, Prioribus, Ministris nostris tam Majoribus quam Minoribus, & quibuscunque aliis de Terra nostra Hiberniæ fidelibus nostris ad quos Præsentes Literæ pervenerint, Salutem: Quia, &c. Nos hæc quæ sequuntur Ordinanda Duximus & firmiter observanda, &c. Imprimis, vizt. Volumus & Præcipimus quod Sancta Hibernicana Ecclesia suas Libertates & Liberas Consuetudines illesas habeat, & eis Libere gaudeat & Utatur. Item volumus & præcipimus quod nostra & ipsius Terræ Negotia presertim Majora & Ardua in Consiliis per Peritos Consiliares nostros & Prælatos & Magnates & quosdam de Discretioribus & Probioribus Hominibus de partibus vicinis ubi ipsa Concilia tenent Contigerit propter hoc evocandos, in Parliamentis vero per ipsos Concilia-*

ros

*ros noſtros ac Prælatos & Proceres alioſque de terra predicta prout Mos Exegit ſecundum Juſticiam Legem Conſuetudinem & Rationem tractentur deducantur & fideliter timore favore odio aut prætio poſt poſitis diſcutiantur ac etiam terminentur, &c. In Cujus Rei Teſtimonium has Literas noſtras fieri fecimus Patentes Teſte meipſo Apud Weſtminſt. 25 die Octob. Anno Regni noſtris Angliæ 31, Regni vero Franciæ 18. Nos autem Ordinationes Voluntates & Præcepta Prædicta ac omnia alia & ſingula in Literis prædictis Contenta Rata Habentes & Grata Ea pro nobis & Hæredibus noſtris quantum in nobis eſt Acceptamus, Approbamus, Ratificamus, & Confirmamus prout Literæ prædictæ rationabiliter teſtantur. In Cujus, &c. Teſt. Reg. apud Weſtminſt. 26 die Junii.*

Fifthly, It is inconſiſtent with the *Royalties* and *Præeminence* of a *Separate* and *Diſtinct Kingdom*. That we are thus a *Diſtinct Kingdom*, has been clearly made out before. 'Tis plain, the Nobility of *Ireland* are an Order of Peers clearly Diſtinct from the Peerage of *England*, the

Inconſiſtent with the Royalties of a Kingdom.

Priviledges of the one, extend not into the other Kingdom; a Lord of *Ireland* may be Arrested by his Body in *England*, and so may a Lord of *England* in *Ireland*, whilst their Persons remain Sacred in their respective Kingdoms: A *Voyage Royal* may be made into *Ireland*, as the Year-Book, 11 *Hen.* 4. 17. fol. 7. and Lord *Cook* tells us; and King *John* in the 12th year of his Reign of *England*, made a *Voyage Royal* into *Ireland*; and all his Tenants in Chief, which did not attend him in that Voyage, did pay him *Escuage*, at the Rate of Two Marks for every *Knights Fee*; which was impoſed *ſuper Prælatis & Baronibus pro Paſſagio Regis in Hibernia*, as appears by the Pipe-Roll, Scutag. 12 *Johannis Regis in Scaccario Angl.* Which ſhews that we are a *Compleat Kingdom* within our ſelves, and not little better than a *Province*, as ſome are ſo Extravagant as to Aſſert; none of the Properties of a *Roman Province* agreeing in the leaſt with our Conſtitution. 'Tis Reſolved in Sir *Richard Pembrough's* Caſe in the 44th of *Edw.* III. That Sir *Richard* might lawfully refuſe the

the King, to serve him as his *Deputy in Ireland*, and that the King could not *Compel* him thereto, for that were to *Banish him into another Kingdom*, which is against *Magna Charta*, Chap. 29. Nay, even tho' Sir *Richard* had great Tenures from the King, *pro servitio Impenso & Impendendo*, for that was said must be understood *within the Realm of England*, *Cooks* 2d Inst. pag. 47. And in *Pilkington*'s Case aforemention'd, *Fortescue* declared, That the Land of *Ireland* is and at all times hath been a *Dominion Separate and Divided from England*. How then can the Realms of *England* and *Ireland*, being *Distinct Kingdoms* and *Separate Dominions*, be imagin'd to have any *Superiority* or *Jurisdiction* the one over the other. 'Tis absurd to fancy that Kingdoms are *Separate* and *Distinct* meerly from the *Geographical Distinction of Territories*. Kingdoms become *Distinct* by *Distinct Jurisdictions*, and *Authorities Legislative* and *Executive*; and as *Rex est qui Regem non habet*, so *Regnum est quod alio non Subjicitur Regno*: A Kingdom can have no *Supream*; 'tis in it self Supream with-

in it self, and must have all Jurisdictions, Authorities and Preeminencies to the Royal State of a Kingdom belonging, or else 'tis none: And that *Ireland* has all these, is declared in the Irish Stat. 33 *Hen.* VIII. c. 1. The chief of these most certainly is, the *Power of Making and Abrogating its own Laws*, and being bound only by such to which the *Community* have given their *Consent*.

Against the Kings Prerogative.

Sixthly, It is *against the Kings Prerogative*, that the Parliament of *England* should have any Co-ordinate Power with Him, to introduce New Laws, or Repeal Old Laws Established in *Ireland*. By the Constitution of *Ireland* under *Poyning's Act*, the King's Prerogative in the Legislature is advanced to a much higher Pitch than ever was Challenged by the Kings in *England*, and the Parliament of *Ireland* stands almost on the same bottom as the King does in *England*; I say *almost* on the same Bottom, for the Irish Parliament have not only a *Negative Voice* (as the King has in *England*) to whatever Laws the King

and

and the Privy Councils of both or either Kingdom, shall lay before them; but have also a Liberty of *Proposing* to the King and his Privy Council here, such Laws as the Parliament of *Ireland* think expedient to be pass'd. Which Laws being thus Proposed to the King, and put into form, and Transmitted to the Parliament here, according to *Poyning's Act*, must be Pass'd or Rejected in the *very Words*, even to a *Tittle*, as they are laid before our Parliament, we cannot alter the least *Iota*. If therefore the *Legislature of Ireland* stand on this Foot, in relation to the King, and to the Parliament of *Ireland*; and the Parliaments of *England* do Remove it from this Bottom, and Assume it to themselves, where the Kings Prerogative is much *Narrower*, and as it were *Reversed*, (for there the King has only a *Negative Vote*) I humbly conceive 'tis an *Incroachment* on the Kings *Prerogative*. But this I am sure, the Parliament of *England* will be always very Tender of, and His Majesty will be very loth to have such a Precious Jewel of his Crown handled rusty.

Against the Practice of former Ages.

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The Happiness of our Constitutions depending on a Right Temperament between the *Kings* and the *Peoples Rights*.

Against the Practice of former Ages.

Seventhly, It is *against the Practice of all former Ages*. Wherein can it appear, that any Statute made in *England*, was at any time since the Reign of *Henry* the Third, allowed and put in practice in the Realm of *Ireland*, without the *Authority* of the *Parliament* of *Ireland*. Is it not manifest by what foregoes, that from the Twentieth of King *Henry* the Third, to the Thirteenth of *Edward* the Second, and from thence to the Eighteenth of *Henry* the Sixth, and from thence, to the Thirty-Second of *Henry* the Sixth, and from thence, to the Eighth of *Edward* the Fourth, and from thence, to the Tenth of *Henry* the Seventh, there was special care taken to introduce the Statutes of *England*, such of them as were necessary or convenient for this Kingdom; by degrees, and always with allowance, and Consent of the *Parliament* and *People* of *Ireland*. And since the *General* allowance of all

the Engliſh Acts and Statutes in the Fourth of *Henry* the Seventh, there have ſeverall Acts of Parliament, which were made in *England* in the Reigns of all the Kings from that Time, Succeſſively to this very Day, been particularly Received by Parliament in *Ireland*, and ſo they become of force here, and not by reaſon of any *General Comprehenſive* words, as ſome Men have lately fancied. For if by *General Comprehenſive Words*, the Kingdom of *Ireland* could be bound by the Acts of Parliament of *England*, what needed all the former *Recitations* in the Parliament of *Ireland*, or what *uſe will there be of the Parliament of Ireland at any time*. If the Religion, Lives, Liberties, Fortunes, and Eſtates of the Clergy, Nobility, and Gentry of *Ireland* may be diſpoſed of without their *Privity* and *Conſent*, what Benefit have they of any Laws, Liberties, or Privileges granted unto them by the Crown of *England*? I am loth to give their Condition an *hard Name*; but I have no other Notion of *Slavery, but being Bound by a Law to which I do not Conſent.*

Eighth-

Against the Resolution of Judges.

Eighthly, 'Tis against several *Resolutions* of the *Learned Judges*, of former times in the very Point in Question. This is manifest from what foregoes in the Case of the *Merchants of Waterford*, *Rilkington's* Case, Prior of *Lanthony's* Case, &c. But I shall not here inlarge farther thereon.

Destroys Property.

Ninthly, The Obligation of all Laws having the same Foundation, if *One* Law may be Imposed *without Consent*, any *Other* Law whatever, may be Imposed on us *Without our Consent*. This will naturally introduce *Taxing us without our Consent*; and this as necessarily destroys our *Property*. I have no other Notion of *Property*, but a *Power of Disposing my Goods as I please*, and not as another shall Command. Whatever another may *Rightfully* take from me *without my Consent*, I have certainly no *Property* in. To *Tax* me without Consent, is little better, if at all, than *down-right Robbing me*. I am sure the Great Patriots of Liberty and Property, the Free Peo-

ple

ple of *England*, cannot think of such a thing, but with Abhorrence.

Lastly, The People of *Ireland* are left by this Doctrine in the Greatest *Confusion* and *Uncertainty* Imaginable. We are certainly bound to Obey the *Supream Authority* over us; and yet hereby we are not permitted to know *Who* or *What* the same is; whether the *Parliament of England*, or *that of Ireland*, or *Both*; And in what Cases the *One*, and in what the *Other*: Which *Uncertainty* is or may be made a Pretence at any time for *Disobedience*. It is not impossible but the Different Legislatures we are subject to, may Enact Different, or Contrary Sanctions; Which of these must we obey? Creates Confusion.

To conclude all, I think it highly *Inconvenient* for *England* to *Assume* this *Authority* over the Kingdom of *Ireland*: I believe there will need no great Arguments to convince the Wise Assembly of English Senators, how *inconvenient* it may be to *England*, to do that which may Inconvenient to *England* to Assume this Power.

make

make the *Lords* and *People of Ireland* think that they are not *Well Used*, and may drive them into *Discontent*. The *Laws* and *Liberties of England* were granted above five hundred years ago to the People of *Ireland*, upon their Submissions to the Crown of *England*, with a Design to make them *Safe* to *England*, and to keep them in the Allegiance of the King of *England*. How Consistent it may be with True Policy, to do that which the People of *Ireland* may think is an *Invasion* of their Rights and Liberties, I do most humbly submit to the Parliament of *England* to Consider. They are Men of *Great Wisdom*, *Honour*, and *Justice*; and know how to prevent all future *Inconveniencies*. We have heard Great Out-cries, and deservedly, on Breaking the *Edict of Nantes*, and other Stipulations; How far the Breaking our Constitution, which has been of Five Hundred years standing, exceeds that, I leave the World to judge. It may perhaps be urg'd, That 'tis *convenient* for the State of *England*, that the *Supream Council* thereof should make their Jurisdiction

tion as *Large* as they can. But with Submission, I conceive that if this *Assumed Power* be not *Just*, it cannot be *convenient* for the State. What *Cicero* says in his *Offices*, *Nihil est Utile, nisi idem sit Honestum*, is most certainly true. Nor do I think, that 'tis any wise *necessary* to the *Good* of *England* to *Assert* this High Jurisdiction over *Ireland*. For since the Statutes of this Kingdom are made with such *Caution*, and in such *Form*, as is prescribed by *Poyning's Act* 10 *H.*7. and by the 3d and 4th of *Phil.* and *Mar.* and whilest *Ireland* is in *English hands*, I do not see how 'tis possible for the Parliament of *Ireland* to do any thing that can be in the least *prejudicial* to *England*. But on the other hand, If *England assume* a *Jurisdiction* over *Ireland*, whereby they think their *Rights* and *Liberties* are *taken away*; *That their Parliaments are rendred meerly nugatory*, and that their Lives and Fortunes Depend on the Will of a *Legislature* wherein they are *not Parties*; there may be ill Consequences of this. *Advancing* the Power of the Parliament of *England*, by

*breaking*

*breaking* the *Rights* of an *other*, may in time have ill Effects.

The *Rights of Parliament* ſhould be preſerved *Sacred* and *Inviolable*, wherever they are found. This kind of Government, once ſo *Univerſal* all over *Europe*, is now almoſt *Vaniſhed* from amongſt the Nations thereof. Our Kings Dominions are the only Supporters of this noble *Gothick Conſtitution*, ſave only what little remains may be found thereof in *Poland*. We ſhould not therefore make ſo light of that ſort of Legiſlature, and as it were Aboliſh it in One Kingdom of the Three, wherein it appears; but rather Cheriſh and Encourage it wherever we meet it.

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